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U.S. DISTRICT COURT
U.S. BANKRUPTCY COURT

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CAMERON S. BURKE
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA and
STATE OF IDAHO,

Plaintiffs,

v.

ASARCO Incorporated, Coeur
d'Alene Mines Corporation,
Callahan Mining Corporation,
Hecla Mining Company, Sunshine
Precious Metals, Sunshine
Mining Company,

Defendants.

CIV 94-0206-N-HLR

CIVIL ACTION NO.

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

1 B. The United States in its complaint seeks, inter
2 alia: (1) reimbursement of certain costs incurred and to be
3 incurred by EPA and the Department of Justice for response
4 actions in connection with the Bunker Hill Superfund Site
5 ("Site") in Shoshone County, Idaho, together with accrued
6 interest; and (2) performance of studies and response work by the
7 Defendants at the Site consistent with the National Oil and
8 Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part
9 300 (as amended) ("NCP").

10 C. In accordance with the NCP and Section 121(f)(1)(F)
11 of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA formally notified the
12 State on November 3, 1992 of negotiations with potentially
13 responsible parties regarding the implementation of the remedial
14 design and remedial action for the Site, and EPA has provided the
15 State with an opportunity to participate in such negotiations and
16 be a party to this Consent Decree.

17 D. The State of Idaho ("State") has joined the
18 complaint against the Defendants pursuant to Section 107 of
19 CERCLA, 42 U.S.C. § 9607, and relevant state law.

20 E. EPA formally notified the United States Department
21 of the Interior, the United States Forest Service, and the Coeur
22 d'Alene Tribe on November 3, 1992 of negotiations with
23 potentially responsible parties regarding the release of
24 hazardous substances that may have resulted in injury to natural
25 resources that are or may be under their trusteeship. However,
26

1 the notification letter further stated that natural resource
2 damages would not be a subject of negotiations.

3 F. The Defendants that have entered into this Consent
4 Decree do not admit any liability to the Plaintiffs arising out
5 of the transactions or occurrences, including releases, alleged
6 in the complaint.

7 G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
8 EPA placed the Bunker Hill facility on the National Priorities
9 List, set forth at 40 C.F.R. Part 300, Appendix B, by publication
10 in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

11 H. The Site has been damaged by over 100 years of
12 mining and 65 years of smelting activity, as well as a variety of
13 other natural and man-made events. Heavy metals have been
14 released into soils, surface water and groundwater throughout the
15 Site to varying degrees through a combination of occurrences
16 including airborne particulate dispersion, alluvial deposition of
17 tailings through various mechanisms, including the flooding of
18 the extensive floodplain area within the Site, and other
19 contaminant movement from both on-site and off-site sources.

20 I. For the purposes of conducting the Remedial
21 Investigation and Feasibility Study ("RI/FS"), the Site has been
22 divided into Populated Areas and Non-Populated Areas. A separate
23 RI/FS and Record of Decision was performed for each of these
24 identified areas.

25 J. In April 1991, EPA and the State completed the
26 Populated Areas RI/FS. Pursuant to Section 117 of CERCLA,

1 42 U.S.C. § 9617, EPA published notice of the completion of the
2 FS and of the proposed plan for the Residential Soil Operable
3 Unit remedial action on April 26-30, 1991, in the Shoshone News
4 Press, a major local newspaper of general circulation. EPA
5 provided an opportunity for written and oral comments from the
6 public on the proposed plan for remedial action. A public
7 hearing was held on May 23, 1991, to answer questions and take
8 comments. A copy of the transcript of the public meeting is
9 available to the public as part of the administrative record upon
10 which the Regional Administrator based the selection of the
11 response action.

12 K. The decision by EPA on the remedial action to be
13 implemented for the Residential Soil Operable Unit of the Site is
14 embodied in a final Record of Decision (the "1991 ROD") which was
15 executed on August 30, 1991, by EPA and the State. The 1991 ROD
16 includes a responsiveness summary to the public comments. Notice
17 of the final plan was published in accordance with Section 117(b)
18 of CERCLA, 42 U.S.C. § 9617(b).

19 L. In June 1992, EPA and some of the PRPs completed the
20 Non-Populated Areas RI/FS. Pursuant to Section 117 of CERCLA, 42
21 U.S.C. § 9617, EPA published notice of the completion of the FS
22 and of the proposed plan for remedial action on June 13, 1992, in
23 the Shoshone News Press and the Spokesman-Review, major local
24 newspapers of general circulation. EPA provided an opportunity
25 for written and oral comments from the public on the proposed
26 plan for remedial action. A public meeting was held on

1 June 25, 1992, to answer questions and take comments. A copy of
2 the transcript of the public meeting is available to the public
3 as part of the administrative record upon which the Regional
4 Administrator based the selection of the response action.

5 M. The decision by EPA on the remedial action to be
6 implemented for the Non-Populated areas and the remaining
7 populated areas of the Site is embodied in a ROD (the "1992
8 ROD"), executed on September 22, 1992, by EPA and the State of
9 Idaho. The 1992 ROD includes a responsiveness summary to the
10 public comments. Notice of the final plan was published in
11 accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

12 N. The Panhandle Health District ("PHD") has agreed to
13 seek to adopt and implement an environmental health code which
14 will provide the basic regulatory framework for implementation of
15 an Institutional Control Program ("ICP"). PHD agrees to work
16 with the local governments within the Site to incorporate
17 enabling language into their planning and zoning ordinances that
18 will complement the environmental health code and aid in the
19 implementation of the ICP. If a local government is unable or
20 does not adopt the necessary enabling provisions, PHD will seek
21 to implement the ICP through its own authorities. The existence
22 of the ICP, as well as the existence of the provisions for the
23 ICP's enforcement, through either the PHD's environmental health
24 code or the planning and zoning ordinances of local governments
25 within the Site, are an acceptable and integral component of
26 remedial actions for the 1991 ROD and 1992 ROD.

1 O. Throughout the years, a number of removal actions
2 have been conducted at this Site.

3 P. Based on the information presently available to EPA,
4 EPA believes that the Work will be properly and promptly
5 conducted by the Settling Defendants if conducted in accordance
6 with the requirements of this Consent Decree and its attachments.

7 Q. Solely for the purposes of Section 113(j) of CERCLA,
8 42 U.S.C. § 9613(j), the Remedial Action and the Work to be
9 performed by the Settling Defendants shall constitute a response
10 action taken or ordered by the President.

11 R. Based on investigations set forth in the RI/FS
12 studies and other data compilations and investigation reports,
13 EPA has determined that the amounts of hazardous substances
14 attributable to the De Minimis Defendants at the Site (Coeur
15 d'Alene Mines Corporation and Callahan Mining Corporation) are
16 minimal in comparison to those attributable to others at the
17 Site, and the toxic or other hazardous effects of the hazardous
18 substances attributable to the De Minimis Defendants at the Site
19 do not contribute disproportionately to the cumulative toxic or
20 other hazardous effects of the hazardous substances at the Site.

21 S. Except as otherwise provided in this Consent Decree,
22 in signing this Decree the Settling Defendants and De Minimis
23 Defendants deny any and all legal and equitable liability and
24 reserve all defenses under any federal, state, local or tribal
25 statute, regulation, or common law for any claim, endangerment,
26 nuisance, response, removal, remedial or others costs or damages

1 incurred or to be incurred by the United States, the State, or
2 other entities or persons or any natural resource damages as a
3 result of the release or threat of release of hazardous
4 substances to, at, from or near the Site. Pursuant to 42 U.S.C.
5 § 9622(d)(1)(B), entry of this Consent Decree is not an
6 acknowledgment by Settling Defendants and De Minimis Defendants
7 that any release or threatened release of a hazardous substance
8 constituting an imminent and substantial endangerment to human
9 health or the environment has occurred or exists at the Site.
10 Settling Defendants and De Minimis Defendants do not admit and
11 retain the right to controvert any of the factual or legal
12 statements or determinations made herein in any judicial or
13 administrative proceeding except in an action to enforce this
14 Consent Decree or as provided in Paragraph 100. Settling
15 Defendants and De Minimis Defendants do agree, however, to the
16 Court's jurisdiction over this matter. This Consent Decree shall
17 not be admissible in any judicial or administrative proceeding
18 against any Settling Defendant or De Minimis Defendants, over its
19 objection, as proof of liability or an admission of any fact
20 dealt with herein, but it shall be admissible in an action to
21 enforce this Consent Decree. This Consent Decree shall not be
22 admissible in any judicial or administrative proceeding brought
23 by or on behalf of any Natural Resource Trustee for natural
24 resource damages, or in any judicial or administrative proceeding
25 brought against any Natural Resource Trustee, over the objection
26

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1 of any Natural Resource Trustee, as proof of or a defense to
2 liability or as an admission of any fact dealt with herein.

3 T. The Parties recognize, and the Court by entering
4 this Consent Decree finds, that this Consent Decree has been
5 negotiated by the Parties in good faith and implementation of
6 this Consent Decree will expedite the cleanup of the Site and
7 will avoid prolonged and complicated litigation between the
8 Parties, and that this Consent Decree is fair, reasonable, and in
9 the public interest.

10 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

11
12 II. JURISDICTION

13 1. This Court has jurisdiction over the subject matter
14 of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and
15 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has
16 personal jurisdiction over the Settling Defendants and De Minimis
17 Defendants. Solely for the purposes of this Consent Decree and
18 the underlying complaints, Settling Defendants and De Minimis
19 Defendants waive all objections and defenses that they may have
20 to jurisdiction of the Court or to venue in this District.
21 Settling Defendants and De Minimis Defendants shall not challenge
22 the terms of this Consent Decree or this Court's jurisdiction to
23 enter and enforce this Consent Decree.

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3. The Settling Defendants shall provide a copy of this Consent Decree to each contractor hired by them, respectively, to perform the Work (as defined below) required by this Consent Decree and to each person representing the Settling Defendants with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their respective contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their respective contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within

February 11, 1994

1 the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.

2 § 9607(b)(3).

3
4 IV. DEFINITIONS

5 4. Unless otherwise expressly provided herein, terms
6 used in this Consent Decree which are defined in CERCLA or in
7 regulations promulgated under CERCLA shall have the meaning
8 assigned to them in CERCLA or in such regulations. Whenever
9 terms listed below are used in this Consent Decree or in the
10 attachments attached hereto and incorporated hereunder, the
11 following definitions shall apply:

12 A. "Administrative Record" means all documents,
13 including any attachments, enclosures, or other supporting
14 materials thereto, compiled, indexed by EPA or the State of Idaho
15 and maintained by EPA as the Administrative Records in support of
16 the 1991 ROD or the 1992 ROD.

17 B. "Allocation Map" means the Bunker Hill Superfund Site
18 Allocation Map attached as Attachment C.

19 C. "Asarco" and "ASARCO Incorporated" means the New
20 Jersey corporation of that name and its subsidiaries, including
21 all of the following: Blackhawk Mining and Developing Company,
22 Limited, Federal Mining and Smelting Company, Green Hill
23 Cleveland Mining Company, Government Gulch Mining Company,
24 Limited, and Wyoming Mining and Milling Company, Limited, and the
25 Mine Owners' Association, to the extent of Asarco's interest;
26 provided however, that the terms "Asarco" and "ASARCO" T17119

1 Incorporated" shall not include any subsidiary or affiliate,
2 whether listed herein or not, to the extent that such subsidiary
3 is deemed liable for response activities at the Site as a result
4 of activities conducted by such subsidiary or predecessor of such
5 subsidiary in a capacity other than as a subsidiary of, and as a
6 result of the subsidiary's or predecessor's independent acts or
7 omissions separate from the liability of, the New Jersey
8 corporation.

9 D. "Best Efforts" includes for the purposes of Paragraph
10 31 the payment of reasonable sums of money in consideration of
11 access.

12 E. "CERCLA" means the Comprehensive Environmental
13 Response, Compensation, and Liability Act of 1980, as amended,
14 42 U.S.C. §§ 9601 et seq;

15 F. "Consent Decree" shall mean this Decree and all
16 attachments hereto which are listed in Section XXX (Attachments).
17 In the event of conflict between this Decree and any attachment,
18 this Decree shall control;

19 G. "Callahan Mining Corporation" means the Arizona
20 corporation.

21 H. "Coeur d'Alene Mines Corporation" means the Idaho
22 corporation.

23 I. "Contractor" or "subcontractor" means the company or
24 companies retained by or on behalf of the Settling Defendants to
25 undertake and accomplish the Work and associated activities
26 required by this Consent Decree;

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1 J. "Day" means a calendar day unless expressly stated
2 to be a working day. "Working day" shall mean a day other than a
3 Saturday, Sunday, or Federal holiday. In computing any period of
4 time under this Consent Decree, where the last day would fall on
5 a Saturday, Sunday, or Federal holiday, the period shall run
6 until the close of business of the next working day;

7 K. "De Minimis Defendants" means Coeur d'Alene Mines
8 Corporation and Callahan Mining Corporation.

9 L. "EPA" means the United States Environmental
10 Protection Agency and any successor departments or agencies;

11 M. "Future Response Costs" shall mean all costs,
12 including, but not limited to, direct and indirect costs, that
13 the United States and the State incur on or after the lodging of
14 this Consent Decree in reviewing or developing plans, reports,
15 and other items pursuant to this Consent Decree, verifying the
16 Work, or otherwise implementing, overseeing, or enforcing this
17 Consent Decree, including, but not limited to, payroll costs,
18 contractor costs, travel costs, laboratory costs, the costs
19 incurred pursuant to Section VII (Additional Response Actions),
20 Section VIII (Periodic Review), Section X (Access) (including,
21 but not limited to, attorneys fees and the amount of just
22 compensation), Section XVI (Emergency Response Costs), and
23 Paragraph 91 of Section XXII (Covenants Not To Sue by
24 Plaintiffs). Future Response Costs shall also include all costs,
25 including direct and indirect costs, paid by the United States

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1 and the State in connection with Area I of the Site on or after
2 the date of lodging of this Consent Decree.

3 N. "Hecla Mining Company" or "Hecla" means the Delaware
4 corporation of that name and its subsidiaries, including all of
5 the following subsidiary corporations: Lucky Friday Silver-Lead
6 Mines Company, Abot Mining Company, Consolidated Silver
7 Corporation, Moonlight Mining Company, Nine Corporation and Wall
8 Street Mining Company, and the Mine Owners' Association, to the
9 extent of Hecla's interest; provided however, that the terms
10 "Hecla" and "Hecla Mining Company" shall not include any
11 subsidiary or affiliate, whether listed herein or not, to the
12 extent that such subsidiary is deemed liable for response
13 activities at the Site as a result of activities conducted by
14 such subsidiary or a predecessor of such subsidiary in a capacity
15 other than as a subsidiary of, and as a result of the
16 subsidiary's or predecessor's independent acts or omissions
17 separate from the liability of, the Delaware corporation. Hecla
18 also is a successor-in-interest by statutory merger to Day Mines,
19 Inc.

20 O. "National Contingency Plan" or "NCP" means the
21 National Oil and Hazardous Substances Pollution Contingency Plan
22 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
23 codified at 40 C.F.R. Part 300, including, but not limited to,
24 any amendments thereto;

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26

1 P. "Operation and Maintenance" or "O & M" means all
2 activities required by the Statement of Work ("SOW") and by the
3 RDRs to maintain the effectiveness of the Remedial Action;

4 Q. "Paragraph" means a portion of this Consent Decree
5 identified by an Arabic numeral or an upper case letter;

6 R. "Parties" means the United States, the State of
7 Idaho, the Settling Defendants, and the De Minimis Defendants;

8 S. "Past Response Costs" shall mean all costs,
9 including, but not limited to, direct and indirect costs and
10 interest, that the United States and the State incurred and paid
11 with regard to the Site prior to lodging of the Consent Decree;

12 T. "Performance Standards" means those cleanup
13 standards, standards of control, and other substantive
14 requirements, criteria, or limitations set forth in the RODs, as
15 clarified by the SOW or RDRs, except that "To Be Considered"
16 criteria referenced in the RODs shall only be deemed Performance
17 Standards if so specified in an RDR.

18 U. "Plaintiffs" means the United States and the State
19 of Idaho;

20 V. "RCRA" means the Solid Waste Disposal Act, as
21 amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource
22 Conservation and Recovery Act);

23 W. "Record(s) of Decision" or "ROD(s)" means both the
24 1991 ROD and the 1992 ROD, relating to the Site, and all
25 attachments thereto. These RODs are attached hereto as
26 Attachment A and incorporated herein by reference;

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1 X. "Remedial Action" means those activities, except for
2 O & M, to be undertaken by the Settling Defendants in a
3 Reasonably Segregable Area of the Site to implement the SOW, the
4 RDRs, and any other final plan or specification approved by EPA.
5 The Reasonably Segregable Areas are:

- 6 -City of Pinehurst (including Dalton Subdivision)
- 7 -City of Smelterville (including 3 parcels of Asarco
owned commercial property commonly known as the Old
Lions Club Lease, Linfor Lumber and Theater Pit)
- 8 -City of Wardner
- 9 -City of Kellogg (portions located on northern side
of I-90)
- 10 -City of Kellogg (portions located on southern side
of I-90)
- 11 -Unincorporated community of Page
- 12 -Unincorporated residential area of Elizabeth Park,
Ross Ranch and Montgomery Gulch
- 13 -Page Pond;

13 Y. "Remedial Action Work Plans" shall mean the
14 Residential Areas Annual Remedial Action Work Plans and the Page
15 Pond Remedial Action Work Plan submitted by the Settling
16 Defendants pursuant to this Consent Decree and described more
17 fully in the SOW;

18 Z. "Remedial Design Reports" (or "RDRs") means the
19 documents submitted by the Settling Defendants to implement the
20 Work required under this Consent Decree. These RDRs are attached
21 hereto as Attachments E - I and incorporated herein by reference;

22 AA. "Section" means a portion of this Consent Decree
23 identified by a Roman numeral;

24 AB. "Settling Defendants" means the following Settling
25 Defendants: Asarco Incorporated, Hecla Mining Company, Sunshine
26 Precious Metals, Inc., and Sunshine Mining Company. T1712

1 AC. "Smelter Defendants" means Bunker Hill Properties,
2 Inc; Bunker Hill Mining Company; Bunker Limited Partnership;
3 Golconda Mining Company; Gulf USA Corporation; Highland Surprise
4 Consolidated-Mining Company; Minerals Corporation of Idaho;
5 Pintlar Corporation; Silver Bowl, Inc.; Stauffer Chemical
6 Company; Syringa Minerals Corporation; Union Pacific Railroad and
7 any other Bunker Hill potentially responsible parties named or to
8 be named by the Environmental Protection Agency.

9 AD. The "Bunker Hill Superfund Site" or "Site" means an
10 approximately twenty-one (21) square mile area in Shoshone
11 County, Idaho, running approximately seven (7) miles in the east-
12 west direction and approximately three (3) miles in the north-
13 south direction as more accurately delineated on Attachment C,
14 the Bunker Hill Superfund Site Allocation Map, excluding any
15 hazardous substances in the South Fork of the Coeur d'Alene River
16 which flow into the Site;

17 AE. "State" means the State of Idaho;

18 AF. "Statement of Work" or "SOW" shall mean the document
19 setting forth the Work, as set forth in Attachment B to this
20 Consent Decree, and any modifications made in accordance with
21 this Consent Decree;

22 AG. "Sunshine Precious Metals, Inc." "Sunshine Mining
23 Company" or "Sunshine" means the Delaware corporations with those
24 names.

25 AH. "Supervising Contractors" means the Settling
26 Defendants or the principal contractors retained by the Settling

1 Defendants to supervise and direct the implementation of the Work
2 under this Consent Decree;

3 AI. "United States" means the United States of America;

4 AJ. "Waste Material" shall mean (1) any "hazardous
5 substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);
6 (2) any pollutant or contaminant under Section 101(33) of CERCLA,
7 42 U.S.C. § 9601(33); (3) any "solid waste" under Section
8 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous
9 waste" under Idaho Code § 39-4403(8);

10 AK. The "Work" shall mean all activities Settling
11 Defendants are required to perform under this Consent Decree,
12 except those required by Section XXVI (Retention of Records).
13

14 V. GENERAL PROVISIONS

15 5. Objectives of the Parties

16 The objectives of the Parties in entering into this
17 Consent Decree are to protect public health or welfare or the
18 environment at the Site by the design and implementation of
19 response actions at the Site by the Settling Defendants and to
20 reimburse response costs of the Plaintiffs.

21 6. Approval of RDRs and SOW

22 The United States and State have reviewed and approved
23 the RDRs for Residential Yards, Rights-of-Ways, Commercial
24 Properties and Water Well Closure, the SOW and the Institutional
25 Control Program Document attached hereto, and have found them
26 consistent with the RODs, the NCP, and the requirements of

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1 relevant EPA remedial design guidance documents. The draft RDR
2 for Page Ponds has been reviewed and approved, but remains
3 subject to review and approval of the final RDR in accordance
4 with the procedures specified in this Consent Decree.

5 7. Commitments by Settling Defendants

6 a. The Settling Defendants shall finance and perform
7 the Work in accordance with this Consent Decree and all plans,
8 standards, specifications, and schedules set forth in or
9 developed and approved by EPA pursuant to this Consent Decree.
10 Settling Defendants shall also reimburse the United States and
11 the State for Past Response Costs and Future Response Costs as
12 provided in this Consent Decree.

13 b. The Settling Defendants shall finance and perform the
14 activities required by the RODs set forth in the following RDRs
15 and the SOW:

16 (1) Residential Yards (Attachment E);

17 (2) Page Pond Closure (Attachment F); and

18 (3) Rights-of-Way (Attachment G), Commercial Properties
19 (Attachment H), and Water Well Closure (Attachment I), solely in
20 those areas designated as Area I on the Bunker Hill Superfund
21 Site Allocation Map (Attachment C) and as provided in the
22 Commercial Properties RDR for Whites RV Park.

23 c. The Settling Defendants shall finance and perform
24 their portion of an institutional controls program (Attachment D)
25 for the Site. Annual costs incurred for their portion of the
26 institutional controls program will be paid by the Settling

1 Defendants on a quarterly basis until certification of all
2 Remedial Actions required by this Consent Decree. Within sixty
3 (60) days of such certification, permanent financing in the form
4 of a trust or other similar mechanism for their portion of the
5 institutional controls program will be provided by the Settling
6 Defendants. The amount provided for permanent financing shall be
7 calculated in accordance with the factors set forth in Attachment
8 D hereto.

9 d. Within forty-five (45) days of entry of this Consent
10 Decree, Settling Defendants shall pay one million dollars
11 (\$1,000,000) to the State of Idaho which will be held in trust
12 for use in implementing aspects of the Institutional Controls
13 Program, as provided in the Trust Declarations (Attachment M),
14 that are not otherwise funded or implemented by the Settling
15 Defendants pursuant to Attachment D.

16 e. In December 1991 and again in September 1993,
17 certain Settling Defendants committed to Shoshone County, Idaho
18 to provide partial funding for an alternate water storage tank
19 and associated valves and piping sufficient to connect the tank
20 to the County's existing water line. These same Settling
21 Defendants also have agreed to provide a parcel of real property
22 on which to locate the tank.

23 f. Except as to Paragraph 55 (Reimbursement of Past
24 Response Costs), the obligations of the Settling Defendants to
25 finance and perform their obligations and to pay amounts owed the
26 United States and the State under this Consent Decree are joint
27 T17223

1 and several. In the event of the insolvency or other failure of
2 any one or more of the Settling Defendants to implement the
3 requirements of this Consent Decree, the remaining Settling
4 Defendants shall complete all such requirements.

5 8. Commitments By De Minimis Defendants

6 The De Minimis Defendants shall together pay the
7 total sum of one million two hundred thirty thousand dollars
8 (\$1,230,000) to the Settling Defendants and shall have no further
9 obligations under this Consent Decree except as otherwise
10 specifically set forth in this Consent Decree. Within thirty
11 (30) days of the Court's entry of this Consent Decree, the De
12 Minimis Defendants shall make their payment to the Settling
13 Defendants with a copy of such payment to EPA.

14
15 9. Termination of Administrative Orders

16 Upon entry of this Consent Decree, the following
17 administrative orders shall be deemed satisfied and withdrawn as
18 to the Settling Defendants and De Minimis Defendants:
19 Administrative Order and Settlement Agreement for 1990
20 Residential Removal Action at the Bunker Hill Superfund Site, EPA
21 Docket No. 1090-05-35-106; Bunker Hill Superfund Site
22 Administrative Order on Consent: Hillsides Revegetation/
23 Stabilization and Removal Action, EPA Docket No. 1090-10-01-106;
24 Administrative Order on Consent for 1991 Removal Action at the
25 Bunker Hill Superfund Site, EPA Docket No. 1091-06-17-106(A);
26 Administrative Order on Consent for 1992 Removal Action at the

1 Bunker Hill Superfund Site, EPA Docket No. 1092-04-14-106; and
2 Unilateral Administrative Order for Portion of the Bunker Hill
3 Residential Soils Remedial Design and Remedial Action No. 1093-
4 08-14-106 (August 24, 1993).

5 10. Compliance With Applicable Law

6 All activities undertaken by Settling Defendants pursuant
7 to this Consent Decree shall be performed in accordance with the
8 requirements of all applicable federal and state laws and
9 regulations. Settling Defendants must also comply with all
10 applicable or relevant and appropriate requirements of all
11 Federal and state environmental laws as set forth in the RODs as
12 clarified by the SOW and the RDRs, except that "To Be Considered"
13 criteria referenced in the RODs shall only be considered
14 applicable or relevant and appropriate requirements if so
15 specified in an RDR. The activities conducted pursuant to this
16 Consent Decree, if approved by EPA, shall be considered to be
17 consistent with the NCP.

18 11. Permits

19 a. As provided in Section 121(e) of CERCLA,
20 42 U.S.C. § 9621(e), and § 300.5 of the NCP, no permit shall be
21 required for any portion of the Work conducted entirely on-Site.
22 Where any portion of the Work requires a federal or state permit
23 or approval, Settling Defendants shall submit timely and complete
24 applications and take all other actions necessary to obtain all
25 such permits or approvals.

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b. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation, nor shall any releases at or from the Site subsequent to entry of this Consent Decree constitute federally permitted releases unless such releases are made in compliance with a federal or state permit specifically authorizing such releases.

12. Notice of Obligations to Successors-in-Title

a. Within thirty (30) days after entry of this Consent Decree, any Settling Defendant(s) who own property within the Site shall submit for EPA approval under Section XII (Submissions Requiring Agency Approval), a listing of the county assessor's parcel number for the property owned by such Settling Defendant within the Site and a summary of the terms of this Consent Decree. This summary shall include a description of where the full Consent Decree can be found. Upon approval of its summary, the Settling Defendant shall have fifteen (15) days to submit for recording by the appropriate recorder's office in Shoshone County, State of Idaho, the summary of the terms of this Consent Decree as approved by EPA. Thereafter, each deed, title, or other instrument conveying an interest in the property of such

1 Settling Defendants included in the Site shall contain a notice
2 stating that the property is subject to this Consent Decree and
3 any lien retained by the United States, and shall reference the
4 recorded location of the Consent Decree and any restrictions
5 applicable to the property under this Consent Decree.

6 b. The obligations of each Settling Defendant with
7 respect to the provision of access under Section X (Access) and
8 the implementation of any applicable institutional controls shall
9 be binding upon such Settling Defendants and any and all persons
10 who subsequently acquire any such interest or portion thereof
11 (hereinafter "Successors-in-Title"). Within thirty (30) days
12 after the entry of this Consent Decree, each Settling Defendant
13 who owns property within the Site shall record at the appropriate
14 Recorder's Office a notice of obligation to provide access under
15 Section X (Access) and related covenants. Each subsequent
16 instrument conveying an interest to any such property included in
17 the Site shall reference the recorded location of such notice and
18 covenants applicable to the property.

19 c. Any Settling Defendant and any Successor-in-Title
20 shall, at least thirty (30) days prior to the conveyance of any
21 such interest, give written notice of this Consent Decree to the
22 grantee and written notice to EPA and the State of the proposed
23 conveyance, including the name and address of the grantee, and
24 the date on which notice of the Consent Decree was given to the
25 grantee. In the event of any such conveyance, the Settling
26 Defendants' obligations under this Consent Decree, including

1 their obligations to provide or secure access pursuant to Section
2 X (Access), shall continue to be met by the Settling Defendants.
3 In addition, if the United States and the State approve, the
4 grantee may perform some or all of the Work under this Consent
5 Decree. In no event shall the conveyance of an interest in
6 property that includes, or is a portion of, the Site release or
7 otherwise affect the liability of the Settling Defendants to
8 comply with the Consent Decree.

9
10 VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

11 13. Selection of Supervising Contractor.

12 a. All aspects of the Work to be performed by Settling
13 Defendants pursuant to Sections VI (Performance of the Work by
14 Settling Defendants), VII (Additional Response Actions), VIII
15 (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling
16 and Data Analysis) of this Consent Decree shall be under the
17 direction and supervision of the Supervising Contractor, the
18 selection of which shall be subject to disapproval by EPA after a
19 reasonable opportunity for review and comment by the State.
20 Within thirty (30) days after the lodging of this Consent Decree,
21 Settling Defendants shall notify EPA and the State, in writing,
22 of the name, title, and qualifications of any contractor proposed
23 to be a Supervising Contractor. EPA will issue a notice of
24 disapproval or an authorization to proceed. If at any time
25 thereafter Settling Defendants propose to change a Supervising
26 Contractor, Settling Defendants shall give such notice to EPA and

1 the State and must obtain an authorization to proceed from EPA,
2 after a reasonable opportunity for review and comment by the
3 State, before the new Supervising Contractor performs, directs,
4 or supervises any Work under this Consent Decree.

5 b. If EPA disapproves a proposed Supervising
6 Contractor, EPA will notify Settling Defendants, in writing.
7 Settling Defendants shall submit to EPA and the State a list of
8 contractors, including the qualifications of each contractor,
9 that would be acceptable to them within thirty (30) days of
10 receipt of EPA's disapproval of the contractor previously
11 proposed. EPA will provide written notice of the names of any
12 contractor(s) that it disapproves and an authorization to proceed
13 with respect to any of the other contractors. Settling
14 Defendants may select any contractor from that list that is not
15 disapproved and shall notify EPA and the State of the name of the
16 contractor selected within twenty-one (21) days of EPA's
17 authorization to proceed.

18 c. If EPA fails to provide written notice of its
19 authorization to proceed or disapproval as provided in this
20 Paragraph and this failure prevents the Settling Defendants from
21 meeting one or more deadlines in a plan approved by the EPA
22 pursuant to this Consent Decree, Settling Defendants may seek
23 relief under the provisions of Section XIX (Force Majeure)
24 hereof.

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1 14. Remedial Design and Remedial Action

2 a. All Work under this Consent Decree is subject to
3 approval by EPA. Settling Defendants shall, in accordance with
4 the SOW and RDRs, prepare and submit required deliverables for
5 approval by EPA pursuant to Section XII (Submissions Requiring
6 Agency Approval). Settling Defendants shall implement the Work:
7 (1) upon approval by EPA, in consultation with the State, of the
8 deliverables required by the SOW and the RDRs, including the
9 Health and Safety Plans, the Quality Assurance Project Plans, the
10 Sampling, or other plans, designs or reports; and (2) upon
11 adoption of an ICP for the area where a Remedial Action is to be
12 performed having the following capabilities: data base
13 management, inspection and enforcement, and an ICP accounting
14 system.

15 b. Settling Defendants shall submit deliverables and
16 perform the Work required under the SOW and RDRs in accordance
17 with the schedules set forth and referred to therein. Once
18 deliverables are approved pursuant to Section XII (Submissions
19 Requiring Agency Approval), they shall be deemed incorporated
20 into and be enforceable under this Consent Decree by this
21 reference.

22 15. Settling Defendants shall only commence on-site
23 physical activities required to implement the Work with EPA's
24 approval.

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1 16. The Work performed by the Settling Defendants
2 pursuant to this Consent Decree shall include the obligation to
3 achieve the Performance Standards.

4 17. Settling Defendants acknowledge and agree that
5 nothing in this Consent Decree, the SOW, the RDRs or any
6 deliverable required by this Consent Decree constitutes a
7 warranty or representation of any kind by Plaintiffs that
8 compliance with the work requirements set forth in the SOW and
9 the RDRs will achieve the Performance Standards. Settling
10 Defendants' compliance with the work requirements shall not
11 foreclose Plaintiffs from seeking compliance with all terms and
12 conditions of this Consent Decree, including, but not limited to,
13 the applicable Performance Standards.

14 18. Settling Defendants shall, prior to any off-Site
15 shipment of Waste Material to an out-of-state waste management
16 facility or any intra-state off-site shipment of hazardous waste,
17 provide written notification to the appropriate state
18 environmental official in the receiving facility's state and to
19 the EPA Project Coordinator of such shipment. However, this
20 notification requirement shall not apply to any off-Site
21 shipments when the total volume of all such shipments will not
22 exceed ten (10) cubic yards.

23 a. The Settling Defendants shall include in the written
24 notification the following information, where available: (1) the
25 name and location of the facility to which the Waste Material is
26 to be shipped; (2) the type and quantity of the Waste Material to

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1 be shipped; (3) the expected schedule for the shipment of the
2 Waste Material; and (4) the method of transportation. The
3 Settling Defendants shall notify the state in which the planned
4 receiving facility is located of major changes in the shipment
5 plan, such as a decision to ship the Waste Material to another
6 facility within the same state, or to a facility in another
7 state.

8 b. If it is determined that waste will be shipped to a
9 waste management facility, the identity of the receiving facility
10 and state will be determined by the Settling Defendants following
11 the award of the contract for Remedial Action construction. The
12 Settling Defendants shall provide the information required by
13 Paragraph 18(a) as soon as practicable after the award of the
14 contract and before the Waste Material is actually shipped.

15
16 VII. ADDITIONAL RESPONSE ACTIONS

17 19. In the event that, prior to certification of a
18 Remedial Action within the Site pursuant to Paragraph 51(b), EPA
19 determines or any of the Settling Defendants proposes that
20 additional response actions are necessary to meet the Performance
21 Standards or to carry out the remedy selected in the ROD as
22 clarified by the SOW and RDRs, notification of such additional
23 response actions shall be provided to the Project Coordinator for
24 the other parties.

25 20. Within thirty (30) days of receipt of notice from
26 EPA pursuant to Paragraph 19 that additional response actions are

1 necessary (or such longer time as may be specified by EPA), the
2 Settling Defendants shall submit for approval by EPA, after
3 reasonable opportunity for review and comment by the State, a
4 work plan for the additional response actions. Upon approval of
5 the plan pursuant to Section XII (Submissions Requiring Agency
6 Approval), the Settling Defendants shall implement the plan for
7 additional response actions in accordance with the schedule
8 contained therein.

9 21. Any additional response actions that the Settling
10 Defendants propose are necessary to meet the Performance
11 Standards shall be subject to approval by EPA, after reasonable
12 opportunity for review and comment by the State, and, if
13 authorized by EPA, shall be completed by the Settling Defendants
14 in accordance with plans, specifications, and schedules approved
15 or established by EPA pursuant to Section XII (Submissions
16 Requiring Agency Approval).

17 22. Settling Defendants may invoke the procedures set
18 forth in Section XX (Dispute Resolution) to dispute EPA's
19 determination that additional response actions are necessary to
20 meet the Performance Standards. Such a dispute shall be resolved
21 pursuant to Paragraphs 66-69 of this Consent Decree.

22 23 VIII. EPA PERIODIC REVIEW

24 23. Settling Defendants shall conduct any studies and
25 investigations as requested by EPA in order to permit EPA to
26 conduct reviews of the Remedial Action at least every five (5)

1 years as required by Section 121(c) of CERCLA, 42 U.S.C.
2 § 9621(c), and any applicable regulations to assure that human
3 health and the environment are being protected by the Remedial
4 Action.

5 24. If required by Sections 113(k)(2) or 117 of CERCLA,
6 42 U.S.C. §§ 9613(k)(2) or 9617, Settling Defendants and the
7 public will be provided with an opportunity to comment on any
8 further response actions proposed by EPA as a result of the
9 review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C.
10 § 9621(c), and to submit written comments for the record during
11 the public comment period. After the period for submission of
12 written comments is closed, the Regional Administrator, EPA
13 Region 10, or his/her delegate will determine in writing whether
14 further response actions are appropriate.

15 25. If the Regional Administrator, EPA Region 10, or
16 his/her delegate determines that information received, in whole
17 or in part, during the review conducted pursuant to Section
18 121(c) of CERCLA, 42 U.S.C. § 9621(c), indicates that the
19 Remedial Action is not protective of human health and the
20 environment, the Settling Defendants shall undertake any further
21 response actions EPA has determined are appropriate, unless their
22 liability for such further response actions is barred by the
23 Covenants Not to Sue set forth in Section XXII (Covenants Not To
24 Sue By Plaintiff). The Settling Defendants shall submit a plan
25 for such work to EPA for approval in accordance with the
26 procedures set forth in Section VI (Performance of the Work by

1 Settling Defendants) and shall implement the plan approved by
2 EPA. The Settling Defendants may invoke the procedures set forth
3 in Section XX (Dispute Resolution) to dispute (1) EPA's
4 determination that the Remedial Action is not protective of human
5 health and the environment, (2) EPA's selection of the further
6 response actions ordered as arbitrary and capricious or otherwise
7 not in accordance with law, or (3) EPA's determination that the
8 Settling Defendants' liability for the further response actions
9 requested is reserved in Paragraphs 85, 86, or 90 or otherwise
10 not barred by the Covenants Not to Sue set forth in Section XXII
11 (Covenants Not To Sue By Plaintiff).
12

13 IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

14 26. Settling Defendants shall use quality assurance,
15 quality control, and chain of custody procedures for all samples
16 in accordance with EPA's "Interim Guidelines and Specifications
17 For Preparing Quality Assurance Project Plans," December 1980,
18 (QAMS-005/80); "Data Quality Objective Guidance,"
19 (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures
20 Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R);
21 and subsequent amendments to such guidelines upon written
22 notification by EPA to Settling Defendants of such amendment.
23 Amended guidelines shall apply only to procedures conducted after
24 such notification. Prior to the commencement of any monitoring
25 project under this Consent Decree, Settling Defendants shall
26 submit to EPA for approval, after a reasonable opportunity for
27

1 review and comment by the State, Quality Assurance Project Plans
2 ("QAPP") that are consistent with the SOW, the RDRs, the NCP, and
3 applicable guidance documents. If relevant to the proceeding,
4 the Parties agree that validated sampling data generated in
5 accordance with the QAPP(s) and reviewed and approved by EPA
6 shall be admissible as evidence, without objection, in any
7 proceeding under this Decree. Settling Defendants shall ensure
8 that EPA and State personnel and their authorized representatives
9 are allowed access at reasonable times to all laboratories
10 utilized by Settling Defendants in implementing this Consent
11 Decree. In addition, Settling Defendants shall ensure that such
12 laboratories shall analyze all samples submitted by EPA pursuant
13 to the QAPP for quality assurance monitoring. Settling
14 Defendants shall ensure that the laboratories they utilize for
15 the analysis of samples taken pursuant to this Decree perform all
16 analyses according to accepted or approved EPA methods. Settling
17 Defendants shall ensure that all laboratories they use for
18 analysis of samples taken pursuant to this Consent Decree
19 participate in an EPA or EPA-equivalent QA/QC program.

20 27. Upon request, the Settling Defendants shall allow
21 split or duplicate samples to be taken by EPA and the State or
22 their authorized representatives. Settling Defendants shall
23 notify EPA and the State not less than fourteen (14) days in
24 advance of any sample collection activity unless shorter notice
25 is agreed to by EPA. In addition, EPA and the State shall have
26 the right to take any additional samples related to performance

1 of the Work or implementation of the Consent Decree that EPA or
2 the State deems necessary. EPA and the State shall provide
3 reasonable notice to the Settling Defendants whenever such
4 samples will be taken. Upon request, EPA and the State shall
5 allow the Settling Defendants to take split or duplicate samples
6 of any samples they take as part of the Plaintiffs' oversight of
7 the Settling Defendants' implementation of the Work.

8 28. Settling Defendants shall submit to EPA and the
9 State four (4) copies of the results of all sampling and/or tests
10 or other data obtained or generated by or on behalf of Settling
11 Defendants with respect to the Work or the implementation of this
12 Consent Decree unless EPA agrees otherwise.

13 29. Notwithstanding any provision of this Consent
14 Decree, the United States and the State hereby retain all of
15 their information gathering and inspection authorities and
16 rights, including enforcement actions related thereto, under
17 CERCLA, RCRA, and any other applicable statutes or regulations.

18
19 X. ACCESS

20 30. Commencing upon the date of lodging of this Consent
21 Decree, the Settling Defendants agree to provide the United
22 States, the State, and their representatives, including EPA and
23 its contractors, access at all reasonable times to the Site and
24 any other property to which access is required for the
25 implementation of this Consent Decree, to the extent access to
26 such property is controlled by Settling Defendants, for the

1 purposes of conducting any activity related to this Consent
2 Decree including, but not limited to:

- 3 a. Monitoring the Work;
- 4 b. Verifying any data or information submitted to the
5 United States;
- 6 c. Conducting investigations relating to contamination
7 at or near (within one half mile of) the Site;
- 8 d. Obtaining samples;
- 9 e. Assessing the need for, planning, or implementing
10 additional response actions at or near (within one
11 half mile of) the Site;
- 12 f. Inspecting and copying records, operating logs,
13 contracts, or other documents maintained or
14 generated by Settling Defendants or their agents in
15 accordance with Section XXV (Access To Information);
16 and
- 17 g. Assessing Settling Defendants' compliance with this
18 Consent Decree.

19 31. To the extent that the Site or any other property to
20 which access is required for the implementation of this Consent
21 Decree is owned or controlled by persons other than Settling
22 Defendants, Settling Defendants shall use best efforts to secure
23 from such persons access for Settling Defendants, as well as for
24 the United States and the State and their representatives,
25 including, but not limited to, their contractors, as necessary to
26 effectuate this Consent Decree. Access will be obtained in
27 accordance with procedures and schedules outlined in the RDRs.
28 If any access required to complete the Work cannot be obtained in
accordance with the noted procedures and schedules, Settling
Defendants shall promptly notify the United States, and shall

1 include in that notification a summary of the steps Settling
2 Defendants have taken to attempt to obtain access. The United
3 States or the State may, as it deems appropriate, assist Settling
4 Defendants in obtaining access. Settling Defendants shall
5 reimburse the United States or the State, in accordance with the
6 procedures in Section XVII (Reimbursement of Response Costs), for
7 all costs incurred in obtaining access.

8 32. Notwithstanding any provision of this Consent
9 Decree, the United States and the State retain all of their
10 access authorities and rights, including enforcement authorities
11 related thereto, under CERCLA, RCRA, and any other applicable
12 statute or regulations.

13 14 XI. REPORTING REQUIREMENTS

15 33. In addition to any other requirement of this Consent
16 Decree, the Settling Defendants shall submit four (4) copies to
17 EPA and two (2) copies to the State of written monthly progress
18 reports that: (a) describe the actions taken toward achieving
19 compliance with this Consent Decree during the previous month;
20 (b) include a summary of all results of sampling and tests and
21 all other data received or generated by the Settling Defendants
22 or their contractors or agents in connection with implementation
23 of this Consent Decree in the previous month unless such
24 information has already been submitted to EPA and the State; (c)
25 identify all deliverables required by this Consent Decree
26 completed and submitted during the previous month; (d) describe

1 all actions, including, but not limited to, data collection and
2 implementation of RDRs, which are scheduled for the next month,
3 and provide other information relating to the progress of
4 activities required by the approved RDRs, including, but not
5 limited to, as relevant, critical path diagrams, Gantt charts and
6 Pert charts; (e) include information regarding percentage of
7 completion, unresolved delays encountered or anticipated that may
8 affect the future schedule for implementation of the Work, and a
9 description of efforts made to mitigate those delays or
10 anticipated delays; (f) include any modifications to any work
11 plans, the RDRs, or schedules that Settling Defendants have
12 proposed to EPA and the State or that have been approved by EPA;
13 and (g) describe all activities undertaken in support of the
14 Community Relations Plan during the previous month and those to
15 be undertaken in the next month. Settling Defendants shall
16 submit these progress reports to EPA and the State by the tenth
17 (10th) day of every month following the lodging of this Consent
18 Decree until EPA notifies the Settling Defendants pursuant to
19 Paragraph 52(b) of Section XV (Certification of Completion). If
20 requested by EPA or the State, Settling Defendants shall also
21 provide briefings for EPA or the State to discuss the progress of
22 the Work.

23 34. The Settling Defendants shall notify EPA and the
24 State of any change in the schedule described in the monthly
25 progress report for the performance of any activity, including,
26 but not limited to, data collection and implementation of the

1 SOW, any work plans and RDRs, no later than seven (7) days prior
2 to the performance of the activity.

3 35. Upon the occurrence of any event during performance
4 of the Work that Settling Defendants are required to report
5 pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section
6 304 of the Emergency Planning and Community Right-to-know Act
7 (EPCRA), 42 U.S.C. § 11004, Settling Defendants shall within
8 twenty-four (24) hours of the onset of such event orally notify
9 the EPA Project Coordinator or the Alternate EPA Project
10 Coordinator (in the event of the unavailability of the EPA
11 Project Coordinator), or, in the event that neither the EPA
12 Project Coordinator or Alternate EPA Project Coordinator is
13 available, the Emergency Response Section, Region 10, United
14 States Environmental Protection Agency. Settling Defendants
15 shall also notify the Project Coordinator for the State. These
16 reporting requirements are in addition to the reporting required
17 by CERCLA Section 103 or EPCRA Section 304.

18 36. Within twenty (20) days of the onset of such an
19 event, Settling Defendants shall furnish to Plaintiffs a written
20 report, signed by the Settling Defendants' Project Coordinator,
21 setting forth the events which occurred and the measures taken,
22 and to be taken, in response thereto. Within thirty (30) days of
23 the conclusion of such an event, the Settling Defendants' Project
24 Coordinator shall submit a report setting forth all actions taken
25 in response thereto.

1 37. The Settling Defendants shall submit four (4) copies
2 to EPA of all plans, reports, and data required by the SOW, the
3 RDRs or any other approved work plans in accordance with the
4 schedules set forth in such plans. The Settling Defendants shall
5 submit two (2) copies of all such plans, reports, and data to the
6 State.

7 38. All reports and other documents submitted by
8 Settling Defendants to EPA and the State, other than the monthly
9 progress reports referred to above, which purport to document
10 Settling Defendants' compliance with the terms of this Consent
11 Decree shall be signed and submitted by the Settling Defendants'
12 Project Coordinator.

13
14 XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

15 39. After review of any plan, report, or other item
16 which is required to be submitted for approval pursuant to this
17 Consent Decree, EPA, after reasonable opportunity for review and
18 comment by the State, shall: (a) approve, in whole or in part,
19 the submission; (b) approve the submission upon specified
20 conditions; (c) modify the submission to cure the deficiencies;
21 (d) disapprove, in whole or in part, the submission, directing
22 that the Settling Defendants modify the submission; or (e) any
23 combination of the above.

24 40. In the event of approval, approval upon conditions,
25 or modification by EPA, pursuant to subparagraph 39(a), (b), or
26 (c), Settling Defendants shall proceed to take any action

1 required by the plan, report, or other item, as approved or
2 modified by EPA subject only to their right to invoke the Dispute
3 Resolution procedures set forth in Section XX (Dispute
4 Resolution) with respect to the modifications or conditions made
5 by EPA. In the event that EPA modifies the submission to cure
6 the deficiencies pursuant to Paragraph 39(c) and the submission
7 has a material defect, EPA retains its right to seek stipulated
8 penalties, as provided in Section XXI (Stipulated Penalties).

9 41. a. Upon receipt of a notice of disapproval
10 pursuant to Paragraph 39(d), Settling Defendants shall, within
11 fourteen (14) days or such other time as specified by EPA in such
12 notice, correct the deficiencies and resubmit the plan, report,
13 or other item for approval. Any stipulated penalties applicable
14 to the submission, as provided in Section XXI (Stipulated
15 Penalties), shall continue to accrue during the fourteen (14) day
16 period or otherwise specified period but shall not be payable
17 unless the resubmission is disapproved or modified due to a
18 material defect as provided in Paragraphs 42 and 43.

19 b. Notwithstanding the receipt of a notice of
20 disapproval pursuant to Paragraph 39(d), Settling Defendants
21 shall proceed, at the direction of EPA, to take any action
22 required by any non-deficient portion of the submission.
23 Implementation of any non-deficient portion of a submission shall
24 not relieve Settling Defendants of any liability for stipulated
25 penalties under Section XXI (Stipulated Penalties) as to any
26 deficient portion.

1 42. In the event that a resubmitted plan, report or
2 other item, or portion thereof, is disapproved by EPA, EPA may
3 again require the Settling Defendants to correct the
4 deficiencies, or may itself address the deficiencies, in
5 accordance with the preceding Paragraphs. EPA also retains the
6 right to amend or develop the plan, report or other item.
7 Settling Defendants shall implement any such plan, report, or
8 item as amended or developed by EPA, subject only to their right
9 to invoke the procedures set forth in Section XX (Dispute
10 Resolution).

11 43. If upon resubmission, a plan, report, or item is
12 disapproved or modified by EPA due to a material defect, Settling
13 Defendants shall be deemed to have failed to submit such plan,
14 report, or item timely and adequately unless the Settling
15 Defendants invoke the dispute resolution procedures set forth in
16 Section XX (Dispute Resolution) and EPA's action is overturned
17 pursuant to that Section. The provisions of Section XX (Dispute
18 Resolution) and Section XXI (Stipulated Penalties) shall govern
19 the implementation of the Work and accrual and payment of any
20 stipulated penalties during Dispute Resolution. If EPA's
21 disapproval or modification is upheld, stipulated penalties shall
22 accrue for such violation from the date on which the initial
23 submission was originally required, as provided in Section XXI,
24 and shall continue to accrue for thirty (30) days after the due
25 date of the resubmission after which date stipulated penalties
26 shall stop accruing unless and until EPA notifies Settling

1 Defendants that it has modified or disapproved the resubmittal
2 because it contains a material defect, upon which date accrual of
3 stipulated penalties shall resume and shall continue to accrue
4 through the final day of the correction of the noncompliance or
5 completion of the activity.

6 44. All plans, reports, and other items required to be
7 submitted to EPA under this Consent Decree shall, upon approval
8 or modification by EPA, be enforceable under this Consent Decree.
9 In the event EPA approves or modifies a portion of a plan,
10 report, or other item required to be submitted to EPA under this
11 Consent Decree, the approved or modified portion shall be
12 enforceable under this Consent Decree.

13
14 XIII. PROJECT COORDINATOR

15 45. Within twenty (20) days of lodging this Consent
16 Decree, the Settling Defendants, the State, and EPA will notify
17 each other, in writing, of the name, address, and telephone
18 number of their designated Project Coordinators and Alternate
19 Project Coordinators. If a Project Coordinator or Alternate
20 Project Coordinator initially designated is changed, the identity
21 of the successor will be given to the other parties at least
22 five (5) working days before the changes occur, unless
23 impracticable, but in no event later than the actual day the
24 change is made. The Settling Defendants' Project Coordinator
25 shall be subject to disapproval by EPA, which disapproval shall
26 not be unreasonably invoked, and shall have the technical

1 expertise sufficient to adequately oversee all aspects of the
2 Work. The Settling Defendants' Project Coordinator shall not be
3 an attorney for any of the Settling Defendants in this matter.
4 The Settling Defendants' Project Coordinator may assign other
5 representatives, including other contractors, to serve as a Site
6 representative for oversight of performance of daily operations
7 during remedial activities.

8 46. Plaintiffs may designate other representatives,
9 including, but not limited to, EPA and State employees, and
10 federal and State contractors and consultants, to observe and
11 monitor the progress of any activity undertaken pursuant to this
12 Consent Decree. EPA's Project Coordinator and Alternate Project
13 Coordinator shall have the authority lawfully vested in a
14 Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)
15 by the NCP, 40 C.F.R. Part 300. In addition, the EPA Project
16 Coordinator, his/her alternate or, to the extent consistent with
17 the Memorandum of Agreement between EPA and the State, the State
18 Project Coordinator or his/her alternate shall have authority,
19 consistent with the NCP, to halt any Work required by this
20 Consent Decree and to take any necessary response action when
21 s/he determines that conditions at the Site constitute an
22 emergency situation or may present an immediate threat to public
23 health or welfare or the environment due to release or threatened
24 release of Waste Material.

1 47. The Project Coordinators will meet, at a minimum, on
2 a monthly basis unless otherwise determined by EPA. This meeting
3 may be held by telephone conference.

4 48. EPA and the State have entered into a Memorandum of
5 Agreement ("MOA") which defines the respective roles of EPA and
6 the State. Pursuant to this MOA, the State will have significant
7 oversight responsibilities.

8
9 XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

10 49. Within sixty (60) days of entry of this Consent
11 Decree, Settling Defendants shall establish and maintain
12 sufficient financial assurance for performance of the Work in one
13 of the following forms:

- 14 (a) A surety bond guaranteeing performance of the Work;
15 (b) One or more irrevocable letters of credit equalling
16 the total estimated cost of the Work;
17 (c) A trust fund;
18 (d) A guarantee to perform the Work by one or more
19 parent corporations or subsidiaries, or by one or
20 more unrelated corporations that have a substantial
21 business relationship with at least one of the
22 Settling Defendants; or
23 (e) A demonstration that one or more of the Settling
24 Defendants satisfy the requirements of 40 C.F.R.
25 Part 264.143(f) or the requirements of Attachment J
26 (Criteria For Financial Assurance).

27 For the purposes of this paragraph only, the estimated cost of
28 the Work may be reduced by the percentage that the work completed
in each year bears to the total estimated costs of the Work.

1 50. If the Settling Defendants seek to demonstrate the
2 ability to complete the Work through a guarantee by a third party
3 pursuant to Paragraph 49(d) of this Consent Decree, Settling
4 Defendants shall demonstrate that the guarantor satisfies the
5 requirements of 40 C.F.R. Part 264.143(f). If Settling
6 Defendants seek to demonstrate their ability to complete the Work
7 by means of the financial test or the corporate guarantee
8 pursuant to Paragraph 49(d) or (e), they shall resubmit sworn
9 statements conveying the information required by 40 C.F.R. Part
10 264.143(f) annually, on the anniversary of the effective date of
11 this Consent Decree. In the event that EPA, after a reasonable
12 opportunity for review and comment by the State, determines at
13 any time that the financial assurances provided pursuant to this
14 Section are inadequate, Settling Defendants shall, within thirty
15 (30) days of receipt of notice of EPA's determination, obtain and
16 present to EPA for approval one of the other forms of financial
17 assurance listed in Paragraph 49 of this Consent Decree. Any
18 determination of inadequacy of a Settling Defendant's financial
19 assurances shall be subject to Dispute Resolution pursuant to
20 Section XX (Dispute Resolution). Settling Defendants' inability
21 to demonstrate financial ability to complete the Work shall not
22 excuse performance of any activities required under this Consent
23 Decree.

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a. Within ninety (90) days after the Settling Defendants conclude that a Remedial Action has been fully performed and the Performance Standards have been attained in accordance with the ROD(s) as clarified by the SOW and the RDRs, the Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that a Remedial Action has been fully performed and the Performance Standards have been attained in accordance with the ROD(s), as clarified by the SOW and the RDRs, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within thirty (30) days of the inspection. In the report, a registered professional Engineer shall provide the certification specified in the SOW and the Settling Defendants' Project Coordinator shall state that a Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer as specified in the SOW. The report shall contain the following statement, signed by a responsible corporate official of the Settling Defendants or the Settling Defendants' Project Coordinator:

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1 "To the best of my knowledge, after thorough investigation,
2 I certify that the information contained in or accompanying
3 this submission is true, accurate and complete. I am aware
4 that there are significant penalties for submitting false
5 information, including the possibility of fine and
6 imprisonment for knowing violations."

7 If, after completion of the pre-certification inspection and
8 receipt and review of the written report, EPA, after reasonable
9 opportunity to review and comment by the State, determines that
10 the relevant Remedial Action has not been completed in accordance
11 with this Consent Decree or that the Performance Standards have
12 not been achieved, EPA will notify the Settling Defendants in
13 writing of the activities that must be undertaken to complete the
14 relevant Remedial Action and achieve the Performance Standards
15 and require the Settling Defendants to submit a schedule to EPA
16 for approval pursuant to Section XII (Submissions Requiring
17 Agency Approval). The Settling Defendants shall perform all
18 activities described in the notice in accordance with the
19 specifications and schedules established pursuant to this
20 Paragraph, subject to their right to invoke the dispute
21 resolution procedures set forth in Section XX (Dispute
22 Resolution).

23 b. If EPA concludes, based on the initial or any subsequent
24 report requesting Certification of Completion and after a
25 reasonable opportunity for review and comment by the State, that
26 a Remedial Action is fully performed and the Performance
27 Standards have been achieved in accordance with the ROD as
28 clarified by the SOW and RDRs, EPA will so certify in writing to

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1 the Settling Defendants. This certification shall constitute the
2 Certification of Completion of a Remedial Action for purposes of
3 this Consent Decree, including, but not limited to, Section XXII
4 (Covenants Not to Sue by Plaintiffs). Certification of
5 Completion of a Remedial Action shall not affect the Settling
6 Defendants' obligations under this Consent Decree that continue
7 beyond the Certification of Completion.

8 52. Completion of the Work

9 a. Within ninety (90) days after the Settling
10 Defendants conclude that all phases of the Work (including O & M)
11 have been fully performed, the Settling Defendants shall schedule
12 and conduct a pre-certification inspection to be attended by EPA
13 and the State. If, after the pre-certification inspection, the
14 Settling Defendants still believe that the Work has been fully
15 performed, the Settling Defendants shall submit a written report
16 which includes a certification by a registered professional
17 engineer as specified by the SOW and a statement by the Settling
18 Defendants' Project Coordinator that the Work has been completed
19 in full satisfaction of the requirements of this Consent Decree.
20 The report shall contain the following statement, signed by a
21 responsible corporate official of the Settling Defendants or the
22 Settling Defendants' Project Coordinator:

23 "To the best of my knowledge, after thorough investigation,
24 I certify that the information contained in or accompanying
25 this submission is true, accurate and complete. I am aware
26 that there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations."

1 If, after review of the written report, EPA, after reasonable
2 opportunity to review and comment by the State, determines that
3 any portion of the Work has not been completed in accordance with
4 this Consent Decree, EPA will notify Settling Defendants in
5 writing of the activities that must be undertaken to complete the
6 Work. EPA will set forth in the notice a schedule for
7 performance of such activities consistent with the Consent
8 Decree, the SOW and the appropriate RDR(s) or require the
9 Settling Defendants to submit a schedule to EPA for approval
10 pursuant to Section XII (Submissions Requiring Agency Approval).
11 The Settling Defendants shall perform all activities described in
12 the notice in accordance with the specifications and schedules
13 established therein, subject to their right to invoke the dispute
14 resolution procedures set forth in Section XX (Dispute
15 Resolution).

16 b. If EPA concludes, based on the initial or any
17 subsequent request for Certification of Completion by the
18 Settling Defendants and after a reasonable opportunity for review
19 and comment by the State, that the Work has been fully performed
20 in accordance with this Consent Decree, EPA will so notify the
21 Settling Defendants in writing.

22 23 XVI. EMERGENCY RESPONSE

24 53. In the event of any action or occurrence arising in
25 connection with the performance of the Work which causes or
26 threatens a release of Waste Material at or from the Site that

1 constitutes an emergency situation or may present an immediate
2 threat to public health or welfare or the environment, the
3 Settling Defendants shall, subject to Paragraph 54, immediately
4 take all appropriate action to prevent, abate, or minimize such
5 release or threat of release, and shall immediately notify the
6 Project Coordinators for EPA and the State, or, if they are
7 unavailable, their alternates. If none of these persons is
8 available, the Settling Defendants shall notify the EPA Emergency
9 Response Unit, Region 10. Settling Defendants shall take such
10 actions in consultation with the EPA Project Coordinator, his/her
11 alternate and to the extent consistent with the Memorandum of
12 Agreement between EPA and the State, the State Project
13 Coordinator or his/her alternate or other available authorized
14 representatives and in accordance with all applicable provisions
15 of the Health and Safety Plans, the Contingency Plans, and any
16 other applicable deliverables developed pursuant to the SOW and
17 RDRs. In the event that Settling Defendants fail to take
18 appropriate response action as required by this Section, and EPA
19 or, as appropriate, the State take such action instead, Settling
20 Defendants shall reimburse EPA and the State all costs of the
21 response action not inconsistent with the NCP pursuant to Section
22 XVII (Reimbursement of Response Costs).

23 54. Nothing in the preceding Paragraph or in this
24 Consent Decree shall be deemed to limit any authority of the
25 United States, or the State, to take, direct, or order all
26 appropriate action or to seek an order from the Court to protect

1 human health and the environment or to prevent, abate, respond
2 to, or minimize an actual or threatened release of Waste Material
3 on, at, or from the Site.

4
5 XVII. REIMBURSEMENT OF RESPONSE COSTS

6 55. Settling Defendants shall reimburse the United
7 States for Past Response Costs as follows:

8 a. Pay fifty percent (50%) of any recoveries (including
9 defense costs) in any insurance litigation relating to the Site
10 to the United States as set forth below in 55(a)(i) - 55(a)(iii).
11 To the extent that a court awards interest on such insurance
12 recoveries, such interest shall also be paid to the United
13 States. To the extent that a court awards insurance prosecution
14 costs, such costs shall not be subject to this paragraph. If
15 there is no express allocation with respect to defense costs for
16 each site that is the subject of the insurance case, then the
17 defense costs shall be allocated among the sites for which a
18 recovery is obtained based upon the amount that each site's
19 recovery bears to the total damages recovered.

20 i. Asarco shall pay up to four million dollars
21 (\$4,000,000.).

22 ii. Hecla shall pay up to three million dollars
23 (\$3,000,000.).

24 iii. Sunshine shall pay up to one million dollars
25 (\$1,000,000.).

1 b. Payment under this subsection shall be made to the
2 United States within thirty (30) days of recovery by the Settling
3 Defendant by Electronic Funds Transfer ("EFT" or wire transfer)
4 to the U.S. Department of Justice lockbox bank referencing
5 U.S.A.O. file number N-94-0155, the EPA Region and Site/Spill
6 ID # 1020 and the DOJ case number 90-11-3-128F. A copy of the
7 check(s) shall be sent to the United States as specified in
8 Section XXVII (Notices and Submissions).

9 c. Each Settling Defendant shall use its best efforts
10 to reimburse the United States for its respective share of the
11 Past Costs listed in Paragraph 55(a). This includes advising the
12 United States before finalizing any insurance settlement or
13 terminating any insurance litigation. Further, Settling
14 Defendants agree to provide the United States non-privileged
15 insurance related documents, upon request, and Settling
16 Defendants agree not to oppose the United States access to
17 litigation records which may be under court ordered seal. In
18 addition to the above, each Settling Defendant shall document
19 annually the status of its efforts to obtain insurance recoveries
20 with supplemental updates on significant events. Such
21 documentation shall be sent to the Chief of the Environmental
22 Enforcement Section, Environment and Natural Resources Division
23 of the U.S. Department of Justice and to the Regional Counsel for
24 the Environmental Protection Agency, Region 10. EPA will notify
25 the Settling Defendants in writing in the event of an EPA
26 determination that Settling Defendants have failed to utilize

1 their best efforts to obtain insurance recoveries. Any
2 disagreement regarding whether a Settling Defendant is utilizing
3 its best efforts to obtain insurance recoveries or properly
4 discharging its duties under this paragraph shall be resolved in
5 accordance with the dispute resolution procedures set forth in
6 Section XX (Dispute Resolution). In the event that it is finally
7 determined that a Settling Defendant did not utilize its best
8 efforts to obtain insurance recoveries, the Settling Defendants
9 shall be entitled to a past cost payment credit of one million
10 dollars (\$1,000,000) in addition to any payments made under this
11 Section.

12 56. Settling Defendants shall reimburse the United
13 States and the State for all Future Response Costs not
14 inconsistent with the NCP incurred by the United States and the
15 State.

16 a. The United States will send Settling Defendants a
17 bill requiring payment that includes a Superfund Cost
18 Organization Recovery Enhancement System Report on a periodic
19 basis. Settling Defendants shall make all payments within forty-
20 five (45) days of Settling Defendants' receipt of each bill
21 requiring payment, except as otherwise provided in Paragraph 57.
22 The Settling Defendants shall make all payments required by this
23 Paragraph in the form of a certified check or checks made payable
24 to "EPA Hazardous Substance Superfund" and referencing the
25 U.S.A.O. file number N-94-0155, the EPA Region and Site/Spill # 1020
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1 DOJ case number 90-11-3-128F. The Settling Defendants shall
2 forward the certified check(s) to:

3 U.S. Environmental Protection Agency
4 EPA Hazardous Substance Superfund
5 P. O. Box 360903M
6 Pittsburgh, Pennsylvania 15251

7 and shall send copies of the check(s) to the United States as
8 specified in Section XXVII (Notices and Submissions).

9 b. Projected State response costs shall be paid by
10 Settling Defendants in advance. Each year, no later than April
11 1, the State shall provide Settling Defendants a detailed written
12 budget for the following budget year. No later than thirty (30)
13 days prior to the beginning of each budget year (July 1), the
14 Settling Defendants shall fund the first two quarters of the
15 estimated budget. No later than thirty (30) days after the end
16 of each quarter, the State shall provide Settling Defendants with
17 an accounting of actual response costs incurred in such quarter.
18 Payments by Settling Defendants of the third and fourth quarter
19 estimated budget shall be made no later than thirty (30) days
20 prior to such quarter and shall be reconciled against actual
21 response costs incurred in the preceding quarters. Settling
22 Defendants shall pay only those costs actually incurred in
23 implementing oversight activities. Payments required by this
24 paragraph shall be made by certified check made payable to "Idaho
25 Department of Health and Welfare" and shall reference this
26 Consent Decree.

1 57. a. Settling Defendants may contest payment of any
2 Future Response Costs under Paragraph 56(a) if they determine
3 that the United States has made an accounting error or if they
4 allege that a cost item that is included represents costs that
5 are inconsistent with the NCP. Such objection shall be made, in
6 writing, within thirty (30) days of receipt of the bill and must
7 be sent to the United States pursuant to Section XXVII (Notices
8 and Submissions). Any such objection shall specifically identify
9 the contested Future Response Costs and the basis for objection.
10 In the event of an objection, the Settling Defendants shall
11 within the thirty (30) day period pay all uncontested Future
12 Response Costs to the United States in the manner described in
13 Paragraph 56. Simultaneously, the Settling Defendants shall
14 establish an interest bearing escrow account in a federally-
15 insured bank duly chartered in the State of Idaho and remit to
16 that escrow account funds equivalent to the amount of the
17 contested Future Response Costs. The Settling Defendants shall
18 send to the United States, as provided in Section XXVII (Notices
19 and Submissions), a copy of the transmittal letter and check
20 paying the uncontested Future Response Costs, and a copy of the
21 correspondence that establishes and funds the escrow account,
22 including, but not limited to, information containing the
23 identity of the bank and bank account under which the escrow
24 account is established as well as a bank statement showing the
25 initial balance of the escrow account. Simultaneously with
26 establishment of the escrow account, the Settling Defendants

1 shall initiate the Dispute Resolution procedures in Section XX
2 (Dispute Resolution). If the United States prevails in the
3 dispute, within five (5) days of the resolution of the dispute,
4 the Settling Defendants shall pay the sums due (with accrued
5 interest) to the United States in the manner described in
6 Paragraph 56. If the Settling Defendants prevail concerning any
7 aspect of the contested costs, the Settling Defendants shall pay
8 that portion of the costs (plus associated accrued interest) for
9 which they did not prevail to the United States in the manner
10 described in Paragraph 56(a); Settling Defendants shall be
11 disbursed any balance of the escrow account. The dispute
12 resolution procedures set forth in this Paragraph in conjunction
13 with the procedures set forth in Section XX (Dispute Resolution)
14 shall be the exclusive mechanisms for resolving disputes
15 regarding the Settling Defendants' obligation to reimburse the
16 United States for its Future Response Costs.

17 b. In the event Settling Defendants contend that
18 payment of estimated response costs to the State in accordance
19 with paragraph 56(b) would include costs inconsistent with the
20 NCP, or costs resulting from an accounting error, Settling
21 Defendants shall make timely payment of undisputed estimated
22 response costs and, at the same time, specifically identify the
23 disputed costs. Settling Defendants and the State agree to
24 attempt informal resolution of the dispute during the a fourteen
25 (14) day period following notification by Settling Defendants of
26 their objection. At the end of the fourteen (14) day informal

1 dispute resolution period, Settling Defendants shall either pay
2 the disputed costs or notify the State that Settling Defendants
3 will seek judicial review of the disputed costs on the basis that
4 such costs are either inconsistent with the NCP or the result of
5 an accounting error.

6 58. In the event that the payments required by
7 Paragraph 55 are not made within the time required by
8 Paragraph 55(b) or the payments required by Paragraph 56(a) are
9 not made within forty-five (45) days of the Settling Defendants'
10 receipt of the bill, Settling Defendants shall pay interest on
11 the unpaid balance at the rate established pursuant to Section
12 107(a) of CERCLA, 42 U.S.C. § 9607. The interest on Future
13 Response Costs shall begin to accrue forty-five (45) days after
14 the Settling Defendants' receipt of the bill. Interest shall
15 accrue at the rate specified through the date of the Settling
16 Defendant's payment. Payments of interest made under this
17 Paragraph shall be in addition to such other remedies or
18 sanctions available to Plaintiffs by virtue of Settling
19 Defendants' failure to make timely payments under this Section.
20

21 XVIII. INDEMNIFICATION AND INSURANCE

22 59. The United States and the State do not assume any
23 liability by entering into this Consent Decree or by virtue of
24 any designation of Settling Defendants as EPA's authorized
25 representatives under Section 104(e) of CERCLA,
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1 42 U.S.C. § 9604(e). The Settling Defendants shall indemnify,
2 save and hold harmless the United States, the State, and their
3 officials, agents, employees, contractors, subcontractors, or
4 representatives for or from any and all claims or causes of
5 action arising from, or on account of, the acts or omissions of
6 the Settling Defendants, and their respective officers,
7 directors, employees, agents, contractors, subcontractors, and
8 any persons acting on their behalf or under their control, in
9 carrying out activities pursuant to this Consent Decree,
10 including, but not limited to, any claims arising from any
11 designation of Settling Defendants as EPA's authorized
12 representatives under Section 104(e) of CERCLA, 42 U.S.C.
13 § 9604(e). Further, the Settling Defendants agree to pay the
14 United States and the State all costs they incur, including, but
15 not limited to, attorneys fees and other expenses of litigation
16 and settlement arising from, or on account of, claims made
17 against the United States based on acts or omissions of Settling
18 Defendants, their officers, directors, employees, agents,
19 contractors, subcontractors, and any persons acting on their
20 behalf or under their control, in carrying out activities
21 pursuant to this Consent Decree. Neither the United States nor
22 the State shall be held out as a party to any contract entered
23 into by or on behalf of Settling Defendants in carrying out
24 activities pursuant to this Consent Decree. Neither the Settling
25 Defendants nor any such contractor shall be considered an agent
26 of the United States or the State.

1 60. Settling Defendants waive all claims against the
2 United States and the State for damages or reimbursement or for
3 set-off of any payments made or to be made to the United States
4 or the State, arising from or on account of any contract,
5 agreement, or arrangement between any one or more of Settling
6 Defendants and any person for performance of Work on or relating
7 to the Site, including, but not limited to, claims on account of
8 construction delays. In addition, Settling Defendants shall
9 indemnify and hold harmless the United States and the State with
10 respect to any and all claims for damages or reimbursement
11 arising from or on account of any contract, agreement, or
12 arrangement between the Settling Defendants, and any person for
13 performance of Work on or relating to the Site, including, but
14 not limited to, claims on account of construction delays.

15 61. No later than fifteen (15) days before commencing
16 any on-Site Work, the Settling Defendants shall secure, and each
17 shall maintain until the first anniversary of EPA's Certification
18 of Completion of all of their Remedial Actions pursuant to
19 Paragraph 51(b) of Section XV (Certification of Completion)
20 comprehensive general liability insurance and automobile
21 insurance. The comprehensive general liability coverage shall
22 have an annual aggregate limit of not less than ten million
23 dollars. In addition, the Settling Defendants each shall secure
24 and shall maintain automobile liability insurance as follows:
25 Bodily injury liability --five hundred thousand dollars each
26 person, one million dollars each occurrence; property damage

1 liability --five hundred thousand dollars each occurrence. All
2 insurance policies shall name the United States, the State and
3 all other Settling Defendants as additional insured. In
4 addition, for the duration of this Consent Decree, the Settling
5 Defendants shall satisfy, or shall ensure that their contractors
6 or subcontractors satisfy, all applicable laws and regulations
7 regarding the provision of worker's compensation insurance for
8 all persons performing the Work on behalf of Settling Defendants
9 in furtherance of this Consent Decree. Prior to commencement of
10 the Work under this Consent Decree, Settling Defendants shall
11 provide to EPA and the State certificates of such insurance and a
12 copy of each insurance policy. Settling Defendants shall
13 resubmit such certificates and copies of policies each year on
14 the anniversary of the effective date of this Consent Decree. If
15 Settling Defendants demonstrate by evidence satisfactory to EPA
16 and the State that any contractor or subcontractor maintains
17 insurance equivalent to that described above, or insurance
18 covering the same risks but in a lesser amount, then, with
19 respect to that contractor or subcontractor, Settling Defendants
20 need provide only that portion of the insurance described above
21 which is not maintained by the contractor or subcontractor.

22
23 XIX. FORCE MAJEURE

24 62. "Force Majeure", for purposes of this Consent
25 Decree, is defined as any event arising from causes beyond the
26 control of the Settling Defendants or of any entity controlled by

1 Settling Defendants, including, but not limited to, their
2 contractors and subcontractors, that delays or prevents the
3 performance of any obligation under this Consent Decree despite
4 Settling Defendants' best efforts to fulfill the obligation. The
5 requirement that the Settling Defendants exercise "best efforts
6 to fulfill the obligation" includes using best efforts to
7 anticipate any potential Force Majeure event and best efforts to
8 address the effects of any potential Force Majeure event (1) as
9 it is occurring and (2) following the potential Force Majeure
10 event, such that the delay is minimized to the greatest extent
11 possible. "Force Majeure" does not include financial inability
12 to complete the Work or a failure to attain the Performance
13 Standards.

14 63. If any event occurs or has occurred that may delay
15 the performance of any obligation under this Consent Decree,
16 whether or not caused by a Force Majeure event, the Settling
17 Defendants shall notify orally the EPA and State Project
18 Coordinators or, in their absence, their alternates or, in the
19 event these representatives are unavailable, the Director of the
20 Hazardous Waste Division, EPA Region 10, within forty-eight (48)
21 hours of when Settling Defendants first knew or should have known
22 that the event might cause a delay. Within five (5) days
23 thereafter, Settling Defendants shall provide in writing to EPA
24 and the State an explanation and description of the reasons for
25 the delay; the anticipated duration of the delay; all actions
26 taken or to be taken to prevent or minimize the delay; a schedule

1 for implementation of any measures to be taken to prevent or
2 mitigate the delay or the effect of the delay; the Settling
3 Defendants' rationale for attributing such delay to a Force
4 Majeure event if they intend to assert such a claim; and a
5 statement as to whether, in the opinion of the Settling
6 Defendants, such event may cause or contribute to an endangerment
7 to public health, welfare or the environment. The Settling
8 Defendants shall include with any notice all available
9 documentation supporting their claim that the delay was
10 attributable to a Force Majeure. Failure to comply with the
11 above requirements shall preclude Settling Defendants from
12 asserting any claim of Force Majeure for that event. Settling
13 Defendants shall be deemed to have notice of any circumstance of
14 which their contractors or subcontractors had or should have had
15 notice.

16 64. If EPA, after a reasonable opportunity for review
17 and comment by the State, agrees that the delay or anticipated
18 delay is attributable to a Force Majeure event, the time for
19 performance of the obligations under this Consent Decree that are
20 affected by the Force Majeure event will be extended by EPA,
21 after a reasonable opportunity for review and comment by the
22 State, for such time as is necessary to complete those
23 obligations. An extension of the time for performance of the
24 obligations affected by the Force Majeure event shall not, of
25 itself, extend the time for performance of any other obligation.
26 If EPA, after a reasonable opportunity for review and comment by

1 the State, does not agree that the delay or anticipated delay has
2 been or will be caused by a Force Majeure event, EPA will notify
3 the Settling Defendants in writing of its decision. If EPA,
4 after a reasonable opportunity for review and comment by the
5 State, agrees that the delay is attributable to a Force Majeure
6 event, EPA will notify the Settling Defendants in writing of the
7 length of the extension, if any, for performance of the
8 obligations affected by the Force Majeure event.

9 65. If the Settling Defendants elect to invoke the
10 dispute resolution procedures set forth in Section XX (Dispute
11 Resolution) either because EPA has determined that the event is
12 not Force Majeure or because they dispute EPA's determination of
13 the length of the extension, if any, they shall do so no later
14 than fifteen (15) days after receipt of EPA's notice. In any
15 such proceeding, the Settling Defendants shall have the burden of
16 demonstrating by a preponderance of the evidence that the delay
17 or anticipated delay has been or will be caused by a Force
18 Majeure event, that the duration of the delay or the extension
19 sought was or will be warranted under the circumstances, that
20 best efforts were exercised to avoid and mitigate the effects of
21 the delay, and that Settling Defendants complied with the
22 requirements of Paragraphs 62 and 63, above. If the Settling
23 Defendants carry this burden, the delay at issue shall be deemed
24 not to be a violation by Settling Defendants of the affected
25 obligation of this Consent Decree identified to EPA and the
26 Court.

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68. a. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, the Settling Defendants who are parties to the dispute invoke the formal dispute resolution procedures of this Section by serving on the United States, the State and the remaining Settling Defendants a written Statement of Position on the matter in dispute,

1 including, but not limited to, any factual data, analysis or
2 opinion supporting that position and any supporting documentation
3 relied upon by the Settling Defendants. The Statement of
4 Position shall specify the Settling Defendants' position as to
5 whether formal dispute resolution should proceed under Paragraph
6 69 or 70.

7 b. Within fourteen (14) days after receipt of
8 Settling Defendants' Statement of Position, EPA will serve on the
9 State and the Settling Defendants its Statement of Position,
10 including, but not limited to, any factual data, analysis, or
11 opinion supporting that position and all supporting documentation
12 relied upon by EPA. EPA's Statement of Position shall include a
13 statement as to whether formal dispute resolution should proceed
14 under Paragraph 69 or 70.

15 c. If there is disagreement between EPA and the
16 Settling Defendants as to whether dispute resolution should
17 proceed under Paragraph 69 or 70, the parties to the dispute
18 shall follow the procedures set forth in the paragraph determined
19 by EPA to be applicable. However, if the Settling Defendants
20 ultimately appeal to the court to resolve the dispute, the Court
21 shall determine which paragraph is applicable in accordance with
22 the standards of applicability set forth in Paragraphs 69 and 70.

23 69. Formal dispute resolution for disputes pertaining to
24 the selection or adequacy of any response action and all other
25 disputes that are accorded review on the administrative record
26 under applicable principles of administrative law shall be

1 conducted pursuant to the procedures set forth in this Paragraph.
2 For purposes of this Paragraph, the adequacy of any response
3 action includes, without limitation: (1) the adequacy or
4 appropriateness of plans, procedures to implement plans, or any
5 other items requiring approval by EPA under this Consent Decree;
6 and (2) the adequacy of the performance of response actions taken
7 pursuant to this Consent Decree. Nothing in this Consent Decree
8 shall be construed to allow any dispute by Settling Defendants
9 regarding the validity of the RODs provisions.

10 a. An administrative record of the dispute shall be
11 maintained by EPA and shall contain all statements of position,
12 including supporting documentation, submitted pursuant to this
13 Paragraph. Where appropriate, EPA may allow submission of
14 supplemental statements of position by the parties to the
15 dispute.

16 b. The Director of the Hazardous Waste Division,
17 EPA Region 10, will issue a final administrative decision
18 resolving the dispute based on the administrative record
19 described in Paragraph 69(a). This decision shall be binding
20 upon the Settling Defendants, subject only to the right to seek
21 judicial review pursuant to Paragraph 69(c) and (d).

22 c. Any administrative decision made by EPA pursuant
23 to Paragraph 69(b) shall be reviewable by this Court, provided
24 that a notice of judicial appeal is filed with the Court by any
25 Settling Defendant who is a party to the dispute and served on
26 the United States, the State and the remaining Settling

1 Defendants within ten (10) days of receipt of EPA's decision.

2 The notice of judicial appeal shall include a description of the
3 matter in dispute, the efforts made by the parties to resolve it,
4 the relief requested, and the schedule, if any, within which the
5 dispute must be resolved to ensure orderly implementation of this
6 Consent Decree. The United States may file a response to
7 Settling Defendants' notice of judicial appeal.

8 d. In proceedings on any dispute governed by this
9 Paragraph, Settling Defendants shall have the burden of
10 demonstrating that the decision of the Hazardous Waste Division
11 Director is arbitrary and capricious or otherwise not in
12 accordance with law. Judicial review of EPA's decision shall be
13 on the administrative record compiled pursuant to Paragraph
14 69(a).

15 70. Formal dispute resolution for disputes that neither
16 pertain to the selection or adequacy of any response action nor
17 are otherwise accorded review on the administrative record under
18 applicable principles of administrative law shall be governed by
19 this Paragraph.

20 a. Following receipt of Settling Defendants'
21 Statement of Position submitted pursuant to Paragraph 68, the
22 Director of the Hazardous Waste Division, EPA Region 10, will
23 issue a final decision resolving the dispute. The Hazardous
24 Waste Division Director's decision shall be binding on the
25 Settling Defendants unless, within ten (10) days of receipt of
26 the decision, the Settling Defendants who are parties to the

1 dispute file with the Court and serve on the United States, the
2 State and the remaining Settling Defendants a notice of judicial
3 appeal setting forth the matter in dispute, the efforts made by
4 the parties to resolve it, the relief requested, and the
5 schedule, if any, within which the dispute must be resolved to
6 ensure orderly implementation of the Consent Decree. The United
7 States may file a response to Settling Defendants' notice of
8 judicial appeal.

9 b. Notwithstanding Paragraph Q of Section I
10 (Background) of this Consent Decree, judicial review of any
11 dispute governed by this Paragraph shall be governed by
12 applicable provisions of law.

13 71. The invocation of formal dispute resolution
14 procedures under this Section shall not extend, postpone or
15 affect in any way any obligation of the Settling Defendants under
16 this Consent Decree not directly in dispute, unless EPA or the
17 Court agrees otherwise. Stipulated penalties with respect to the
18 disputed matter shall continue to accrue but payment shall be
19 stayed pending resolution of the dispute as provided in
20 Paragraph 81. Notwithstanding the stay of payment, stipulated
21 penalties shall accrue from the first day of noncompliance with
22 any applicable provision of this Consent Decree. In the event
23 that the Settling Defendant does not prevail on the disputed
24 issue, stipulated penalties shall be assessed and paid as
25 provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

72. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 73 and 74 to the United States for failure to comply with the requirements of this Consent Decree specified below which pertain to them, unless excused under Section XIX (Force Majeure). "Compliance" by the Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, the RDRs and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

73. a. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st - 14th day
\$5,000	15th - 30th day
\$10,000	31st day and beyond

b. Activities/Deliverables

-Submission of Residential Areas Annual Remedial Action Work Plan on or before April 15 of each year as described in the SOW and the relevant RDRs.

1 -Initiation of remediation construction activities by
2 June 15 of each year unless an extension is approved by
3 EPA due to adverse weather conditions. Such initiation
4 is described in the SOW, the relevant RDRs and the
5 approved Residential Areas Annual Remedial Action Work
6 Plan.

7 -Completion of yards, commercial properties, rights-of-
8 ways, and water well closure required by the SOW, the
9 relevant RDRs and the approved Residential Areas Annual
10 Remedial Action Work Plan by the end of each construction
11 season unless EPA otherwise approves due to adverse
12 weather conditions.

13 -Submission of draft final RDR for Page Ponds, submission
14 of Page Pond Remedial Action Work Plan and initiation of
15 on-site remediation at Page Ponds in accordance with the
16 SOW and approved RDR.

17 -Annual Construction Completion Reports within sixty (60)
18 days of completion of on-site construction for each
19 construction season.

20 74. For all other requirements of this Consent Decree,
21 except Section XIV (Assurance of Ability to Complete Work) and
22 Paragraph 61 (Insurance), stipulated penalties shall accrue in
23 the following amounts:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st - 14th day
\$1,000.00	15th - 30th day
\$5,0000.00	31st day and beyond

24 75. In the event that EPA assumes performance of a
25 portion or all of the Work pursuant to Paragraph 91 of Section
26 XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants
27 shall be liable for an additional stipulated penalty in the
28

1 amount of three (3) times the cost incurred by EPA to perform the
2 Work or \$100,000.00, whichever is less.

3 76. Except as provided in Paragraph 43, all penalties
4 shall begin to accrue on the day after the complete performance
5 is due or the day a violation occurs, and shall continue to
6 accrue through the final day of the correction of the
7 noncompliance or completion of the activity. Nothing herein
8 shall prevent the simultaneous accrual of separate penalties for
9 separate violations of this Consent Decree.

10 77. In its sole, unreviewable discretion, EPA may waive
11 a portion of the stipulated penalties due under this Section.

12 78. Following EPA's determination that Settling
13 Defendants have failed to comply with a requirement of this
14 Consent Decree, EPA may give Settling Defendants written
15 notification of the same and describe the noncompliance. EPA may
16 send the Settling Defendants a written demand for the payment of
17 the penalties. However, penalties shall accrue as provided in
18 Paragraph 76 regardless of whether EPA has notified the Settling
19 Defendants of a violation.

20 79. All penalties owed to the United States under this
21 section shall be due and payable within thirty (30) days of the
22 Settling Defendants' receipt of a demand for payment of
23 penalties, unless Settling Defendants invoke the Dispute
24 Resolution procedures under Section XX (Dispute Resolution). All
25 payments under this Section shall be paid by certified check made
26 payable to "EPA Hazardous Substances Superfund," shall be mailed

1 to US Environmental Protection Agency, EPA Hazardous Substance
2 Superfund, P.O. Box 360903M, Pittsburgh, PA 15251 and shall
3 reference the U.S.A.O file number _____, the EPA Region
4 and Site/Spill ID #1020, and DOJ case number. Copies of check(s)
5 paid pursuant to this Section, and any accompanying transmittal
6 letter(s), shall be sent to the United States as provided in
7 Section XXVII (Notices and Submissions).

8 80. The payment of penalties shall not alter in any way
9 Settling Defendants' obligation to complete the performance of
10 the Work required under this Consent Decree.

11 81. Penalties shall continue to accrue as provided in
12 Paragraph 76 during any dispute resolution period, but need not
13 be paid until the following:

14 a. If the dispute is resolved by agreement or by a
15 decision of EPA that is not appealed to this Court, accrued
16 penalties determined to be owing shall be paid to EPA within
17 fifteen (15) days of the agreement or the receipt of EPA's
18 decision or order;

19 b. If the dispute is appealed to this Court and
20 the United States prevails in whole or in part, Settling
21 Defendants shall pay all accrued penalties determined by the
22 Court to be owed to EPA within sixty (60) days of receipt of the
23 Court's decision or order, except as provided in Subparagraph c
24 below;

25 c. If the District Court's decision is appealed by
26 any Party, Settling Defendants shall pay all accrued penalties

1 determined by the District Court to be owing to the United States
2 into an interest-bearing escrow account within sixty (60) days of
3 receipt of the Court's decision or order. Penalties shall be
4 paid into this account as they continue to accrue, at least every
5 sixty (60) days. Within fifteen (15) days of receipt of the
6 final appellate court decision, the escrow agent shall pay the
7 balance of the account to EPA or to Settling Defendants to the
8 extent that they prevail.

9 82. a. If Settling Defendants fail to pay stipulated
10 penalties when due, the United States may institute proceedings
11 to collect the penalties, as well as interest. Settling
12 Defendants shall pay interest on the unpaid balance, which shall
13 begin to accrue on the date of demand made pursuant to Paragraph
14 79 at the rate established pursuant to Section 107(a) of CERCLA,
15 42 U.S.C. § 9607.

16 b. Nothing in this Consent Decree shall be
17 construed as prohibiting, altering, or in any way limiting the
18 ability of the United States or the State to seek any other
19 remedies or sanctions available by virtue of Settling Defendants'
20 violation of this Decree or of the statutes and regulations upon
21 which it is based, including, but not limited to, penalties
22 pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

23 83. No payments made under this Section shall be tax
24 deductible for Federal or State tax purposes.

1 XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

2 84. a. In consideration of the actions that will be
3 performed and payments that will be made by the Settling
4 Defendants under the terms of the Consent Decree, and except as
5 specifically provided in Paragraphs 85, 86 and 90 of this
6 Section, the United States covenants not to sue or to take
7 administrative action against Settling Defendants pursuant to
8 Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a),
9 and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site.
10 In consideration of the actions that will be performed and
11 payments that will be made by the Settling Defendants under the
12 terms of the Consent Decree, and except as specifically provided
13 in Paragraphs 87, 88 and 90 of this Section, the State covenants
14 not to sue or to take action against Settling Defendants pursuant
15 to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Hazardous
16 Waste Management Act, Idaho Code Section § 39-4401 et. seq., and,
17 the Environmental Protection and Health Act, Idaho Code Section
18 § 39-101 et. seq., relating to the Site. With respect to past
19 costs, these covenants not to sue shall take effect upon entry of
20 the Consent Decree, subject to Settling Defendants' full
21 compliance with Paragraph 55. With respect to future liability
22 at the Site other than Area I on the Allocation Map, the covenant
23 not to sue shall take effect upon entry of the Consent Decree.
24 With respect to the ICP, the covenant not to sue shall take
25 effect upon full satisfaction of all requirements of the ICP
26 imposed on Settling Defendants by this Consent Decree as set

1 forth in Attachment D. With respect to future liability for Area
2 I on the Allocation Map, the covenant not to sue shall take
3 effect for a Remedial Action upon Certification of Completion by
4 EPA pursuant to Paragraph 51(b) of Section XV (Certification of
5 Completion) of that Remedial Action. These covenants not to sue
6 are conditioned upon the complete and satisfactory performance by
7 Settling Defendants of their obligations under this Consent
8 Decree. These covenants not to sue extend only to the Settling
9 Defendants and do not extend to any other person or to any claims
10 or actions against Settling Defendants beyond the boundaries of
11 the Site.

12 b. Except as specifically provided in Paragraphs 90 and
13 92 effective upon payment of the amount specified in Paragraph 8
14 of this Consent Decree, the United States covenants not to sue or
15 to take any other civil or administrative action against the De
16 Minimis Defendants pursuant to Section 106 and 107(a) of CERCLA,
17 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42
18 U.S.C. § 6973, relating to the Site. Except as specifically
19 provided in Paragraphs 90 and 92 effective upon payment of the
20 amount specified in Paragraph 8 of this Consent Decree, the State
21 covenants not to sue or to take action against the De Minimis
22 Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C.
23 § 9607(a), the Hazardous Waste Management Act, Idaho Code Section
24 § 39-4401 et. seq., and, the Environmental Protection and Health
25 Act, Idaho Code Section § 39-101 et. seq., relating to the Site.
26 These covenants not to sue are conditioned upon the complete and

1 satisfactory performance of the De Minimis Defendants'
2 obligations under this Consent Decree. These covenants not to
3 sue extend only to the De Minimis Defendants and do not extend to
4 any other person.

5 85. United States' Pre-Certification Reservations

6 Notwithstanding any other provision of this Consent
7 Decree, the United States reserves, and this Consent Decree is
8 without prejudice to:

9 a. any right to institute proceedings in this action or
10 in a new action, or issue an administrative order seeking to
11 compel the Settling Defendants (1) to perform further response
12 actions relating to Area I on the Allocation Map; or (2) to
13 reimburse the United States for additional costs of response
14 attributable to Area I on the Allocation Map, if, prior to
15 Certification of Completion of a Remedial Action,

16 (i) conditions within Area I on the Allocation Map,
17 previously unknown to EPA, are discovered, or

18 (ii) information, previously unknown to EPA, is received
19 in whole or in part,

20 and these previously unknown conditions or information together
21 with any other relevant information indicate that that Remedial
22 Action is not protective of human health and the environment.

23 For purposes of this Paragraph, Settling Defendants agree to
24 accept responsibility and liability within Area I on the
25 Allocation Map for hazardous substance releases existing as of

1 the effective date of this Consent Decree attributable to the
2 Smelter Defendants.

3 b. Except as otherwise provided in paragraph 85(a) or
4 elsewhere in this Consent Decree, the Settling Defendants reserve
5 all defenses they or the Smelter Defendants may have with regard
6 to any actions taken by the United States under this Paragraph.

7 86. United States Post-Certification Reservations

8 Notwithstanding any other provision of this Consent
9 Decree, the United States reserves, and this Consent Decree is
10 without prejudice to:

11 a. any right to institute proceedings in this action or
12 in a new action, or issue an administrative order seeking to
13 compel the Settling Defendants (1) to perform further response
14 actions relating to Area I on the Allocation Map; or (2) to
15 reimburse the United States for additional costs of response
16 attributable to Area I on the Allocation Map, if, subsequent to
17 Certification of Completion of a Remedial Action,

18 (i) conditions within Area I on the Allocation Map,
19 previously unknown to EPA, are discovered, or

20 (ii) information, previously unknown to EPA, is received
21 in whole or in part,

22 and these previously unknown conditions or information together
23 with any other relevant information indicate that that Remedial
24 Action is not protective of human health and the environment.
25 For purposes of this Paragraph, Settling Defendants agree to
26 accept responsibility and liability within Area I on the

1 Allocation Map for hazardous substance releases existing as of
2 the effective date of this Consent Decree attributable to the
3 Smelter Defendants.

4 b. Except as otherwise provided in paragraph 86(a) or
5 elsewhere in this Consent Decree, the Settling Defendants reserve
6 all defenses they or the Smelter Defendants may have with regard
7 to any actions taken by the United States under this Paragraph.

8 87. State of Idaho's Pre-Certification Reservations

9 Notwithstanding any other provision of this Consent
10 Decree, the State reserves, and this Consent Decree is without
11 prejudice to any right it may have, jointly with, or separately
12 from the United States, to institute proceedings in this action
13 or in a new action pursuant to the State's authorities under
14 Section 107 of CERCLA or applicable State law, including the
15 Hazardous Waste Management Act, Idaho Code Section § 39-4401 et
16 seq., and, the Environmental Protection and Health Act, Idaho
17 Code Section § 39-101 et seq., seeking (1) to compel Settling
18 Defendants to perform further response actions relating to Area I
19 on the Allocation Map, or (2) to compel Settling Defendants to
20 reimburse the State for additional costs of response attributable
21 to Area I on the Allocation Map, if, prior to Certification of
22 Completion of a Remedial Action,

- 23 (i) conditions within Area I on the Allocation Map,
24 previously unknown to the State, are discovered, or
25 (ii) information, previously unknown to the State, is
26 received in whole or in part,

1 and based on these previously unknown conditions or information
2 together with any other relevant information indicate that that
3 Remedial Action is not protective of human health and the
4 environment. For purposes of this Paragraph, Settling Defendants
5 agree to accept responsibility and liability within Area I on the
6 Allocation Map for hazardous substance releases existing as of
7 effective date of this Consent Decree attributable to the Smelter
8 Defendants.

9 b. Except as otherwise provided in paragraph 87(a) or
10 elsewhere in this Consent Decree, the Settling Defendants reserve
11 all defenses they or the Smelter Defendants may have with regard
12 to any actions taken by the State under this Paragraph.

13 88. State of Idaho's Post-Certification Reservations

14 Notwithstanding any other provision of this Consent
15 Decree, the State reserves, and this Consent Decree is without
16 prejudice to any right it may have, jointly with, or separately
17 from the United States, to institute proceedings in this action
18 or in a new action pursuant to the State's authorities under
19 Section 107 of CERCLA or applicable State law, including the
20 Hazardous Waste Management Act, Idaho Code Section § 39-4401 et
21 seq., and, the Environmental Protection and Health Act, Idaho
22 Code Section § 39-101 et seq., seeking (1) to compel Settling
23 Defendants to perform further response actions relating to Area I
24 on the Allocation Map, or (2) to compel Settling Defendants to
25 reimburse the State for additional costs of response attributable
26

1 to Area I on the Allocation Map, if subsequent to Certification
2 of Completion of a Remedial Action:

- 3 (i) conditions within Area I on the Allocation Map,
4 previously unknown to the State, are discovered, or
5 (ii) information, previously unknown to the State, is
6 received in whole or in part,

7 and these previously unknown conditions or information together
8 with any other relevant information indicate that that Remedial
9 Action is not protective of human health and the environment.

10 For purposes of this Paragraph, Settling Defendants agree to
11 accept responsibility and liability within Area I on the
12 Allocation Map for hazardous substance releases existing as of
13 the effective date of this Consent Decree attributable to the
14 Smelter Defendants.

15 b. Except as otherwise provided in paragraph 88(a) or
16 elsewhere in this Consent Decree, the Settling Defendants reserve
17 all defenses they or the Smelter Defendants may have with regard
18 to any actions taken by the State under this Paragraph.

19 89. For purposes of Paragraphs 85 and 87, the
20 information and the conditions known to EPA and the State shall
21 include only that information and those conditions set forth in
22 the RODs for the Site and the Administrative Record supporting
23 the RODs. For purposes of Paragraph 86 and 88, the information
24 and the conditions known to EPA and the State shall include only
25 that information and those conditions set forth in the RODs, the
26 Administrative Record supporting the RODs, and any information

1 received by EPA pursuant to the requirements of this Consent
2 Decree prior to Certification of Completion of the Remedial
3 Action.

4 90. General reservations of rights. Notwithstanding
5 any other provision of this Consent Decree, the covenants not to
6 sue set forth above do not pertain to any matters other than
7 those expressly specified in Paragraph 84. The United States and
8 the State reserve, and this Consent Decree is without prejudice
9 to, all rights against Settling Defendants and De Minimis
10 Defendants with respect to all other matters, including but not
11 limited to, the following:

- 12 (1) claims based on a failure by Settling Defendants or
13 De Minimis Defendants to meet a requirement under
 this Consent Decree;
- 14 (2) liability arising from the past, present, or future
15 disposal, release, or threat of release of Waste
 Materials outside of the Site;
- 16 (3) liability for damages for injury to, destruction
17 of, or loss of natural resources, including the
 reasonable costs of assessing such injury,
18 destruction, or loss resulting from such a release;
- 19 (4) liability for response costs that have been or may
 be incurred by any natural resource trustees;
- 20 (5) criminal liability;
- 21 (6) liability for violations of federal or state law
22 which occur during or after implementation of the
 Remedial Action;
- 23 (7) liability for response costs incurred and/or
24 response actions taken outside of the Site;
- 25 (8) liability for costs that the United States will
26 incur related to the Site but are not within the
 definition of Future Response Costs; or

1 (9) liability for releases or threatened releases of
2 hazardous substances resulting from activities of
3 the Settling Defendants or De Minimis Defendants in
4 or affecting the Site after entry of the Consent
5 Decree.

6 91. In the event EPA, after consultation with the State,
7 determines that Settling Defendants have failed to implement any
8 provisions of the Work in an adequate or timely manner, EPA or,
9 upon request by EPA, the State, may perform any and all portions
10 of the Work as EPA determines necessary. Settling Defendants may
11 invoke the procedures set forth in Section XX (Dispute
12 Resolution) to dispute EPA's determination that the Settling
13 Defendants failed to implement a provision of the Work in an
14 adequate or timely manner as arbitrary and capricious or
15 otherwise not in accordance with law. Such dispute shall be
16 resolved on the administrative record. Costs incurred by the
17 United States or the State in performing the Work pursuant to
18 this Paragraph shall be considered Future Response Costs that
19 Settling Defendants shall pay pursuant to Section XVII
20 (Reimbursement of Response Costs).

21 92. Nothing in this Consent Decree constitutes a
22 covenant not to sue or to take action or otherwise limits the
23 ability of the United States, including EPA, to seek or obtain
24 further relief from the De Minimis Defendants, and the covenant
25 not to sue in Section XXII, Paragraph 84(b) of this Consent
26 Decree is null and void, if information not currently known to
27 EPA is discovered which indicates that the De Minimis Defendants
28 contributed an amount greater than five (5) percent of hazardous

1 substances at the Site, or of toxic or hazardous effects greater
2 than five (5) percent, so that the De Minimis Defendants no
3 longer qualify as a de minimis party at this Site.

4 93. Notwithstanding any other provisions of this Consent
5 Decree, the United States and the State retain all authority and
6 reserve all rights to take any and all response actions
7 authorized by law.

8
9 XXIII. COVENANTS BY SETTLING DEFENDANTS

10 94. Except as limited in this paragraph, Settling
11 Defendants and De Minimis Defendants hereby covenant not to sue
12 and agree not to assert any claims or causes of action against
13 the United States, the State or any Idaho county, city or local
14 governmental entity with respect to the Site or this Consent
15 Decree, including, but not limited to, any direct or indirect
16 claim for reimbursement from the Hazardous Substance Superfund
17 (established pursuant to the Internal Revenue Code, 26 U.S.C.
18 § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113, 42
19 U.S.C. §§ 9606(B)(2), 9611, 9612, 9613 or any other provision of
20 law, any claim against the United States, including any
21 department, agency or instrumentality of the United States under
22 CERCLA Section 107 or 113 related to the Site, any claim against
23 the State or any Idaho county, city or local governmental entity
24 under CERCLA Section 107 or 113 related to the Site or any claims
25 arising out of response activities at the Site. However, the
26 Settling Defendants and the De Minimis Defendants reserve, and

1 this Consent Decree is without prejudice to, actions against the
2 United States, the State or any Idaho county, city or local
3 government entity based on negligent actions taken directly by
4 such entities (not including oversight of or approval of the
5 Settling Defendants' plans or activities) that are brought
6 pursuant to any statute other than CERCLA and for which the
7 waiver of sovereign immunity is found in a statute other than
8 CERCLA to the extent such claim exists or may exist in the
9 future. In addition, the Settling Defendants and the De Minimis
10 Defendants reserve, and this Consent Decree is without prejudice
11 to, contribution actions against the United States or the State
12 or any department, agency or instrumentality thereof, or any
13 Idaho county, city or local government entity whether or not
14 still in existence, under CERCLA Sections 107(a) and 113(f)(1),
15 42 U.S.C. §§ 9607(a) and 9613(f)(1), for natural resource
16 damages. The Settling Defendants and the De Minimis Defendants
17 also reserve and this Consent Decree is without prejudice to,
18 actions or claims against the State or any Idaho county, city, or
19 local government entity under Section 107(a) and 133(f)(1) of
20 CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f)(1), for response costs
21 incurred by Settling Defendants and the De Minimis Defendants
22 unrelated to implementation of the ROD as a result of activities
23 at the Site taken by such government entity after the effective
24 date of this Consent Decree (not including the activities of any
25 such government entity pursuant to this Consent Decree). Nothing
26 in this Consent Decree shall be deemed to constitute

1 preauthorization of a claim within the meaning of Section 111 of
2 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

3 95. Each Settling Defendant and each De Minimis
4 Defendant hereby expressly covenants not to sue any other
5 Settling Defendant or De Minimis Defendant and its officers,
6 directors, parents, subsidiaries, employees or agents with
7 respect to matters covered by this Consent Decree, except for
8 claims premised on the failure of a Settling Defendant or De
9 Minimis Defendant to perform its obligations under this Consent
10 Decree or under any agreement among some or all Settling
11 Defendants or De Minimis Defendant which addresses
12 responsibilities pertaining to this Consent Decree.

13
14 XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

15 96. Nothing in this Consent Decree shall be construed to
16 create any rights in, or grant any cause of action to, any person
17 not a party to this Consent Decree. The preceding sentence shall
18 not be construed to waive or nullify any rights that any person
19 not a signatory to this Consent Decree may have under applicable
20 law. Each of the Parties expressly reserves any and all rights
21 (including, but not limited to, any right to contribution),
22 defenses, claims, demands, and causes of action which each party
23 may have with respect to any matter, transaction, or occurrence
24 relating in any way to the Site against any person not a party
25 hereto. Nothing in this paragraph shall negate Settling

1 Defendants' covenant not to sue any Idaho county, city or local
2 government entity as provided in paragraph 94.

3 97. With regard to claims for contribution against
4 Settling Defendants and De Minimis Defendants for matters
5 addressed in this Consent Decree, the Parties hereto agree that
6 the Settling Defendants and the De Minimis Defendants are
7 entitled to such protection from contribution actions or claims
8 as is provided by CERCLA Section 113(f)(2), 42 U.S.C.
9 § 9613(f)(2).

10 98. The Settling Defendants and the De Minimis
11 Defendants agree that with respect to any suit or claim for
12 contribution brought by them for matters related to the Site or
13 this Consent Decree they will notify the United States and the
14 State, in writing, no later than sixty (60) days prior to the
15 initiation of such suit or claim.

16 99. The Settling Defendants and the De Minimis
17 Defendants also agree that with respect to any suit or claim for
18 contribution brought against them for matters related to the Site
19 or this Consent Decree they will notify, in writing, the United
20 States and the State within ten (10) days of service of the
21 complaint on them. In addition, Settling Defendants and De
22 Minimis Defendants shall notify the United States and the State
23 within ten (10) days of service or receipt of any Motion for
24 Summary Judgment and within ten (10) days of receipt of any order
25 from a court setting a case for trial.

1 100. In any subsequent administrative or judicial
2 proceeding initiated by the United States or the State for
3 injunctive relief, recovery of response costs, or other
4 appropriate relief relating to the Site, Settling Defendants and
5 De Minimis Defendants shall not assert, and may not maintain, any
6 defense or claim based upon the principles of waiver, res
7 judicata, collateral estoppel, issue preclusion, claim-splitting,
8 or other defenses based upon any contention that the claims
9 raised by the United States or the State in the subsequent
10 proceeding were or should have been brought in the instant case;
11 provided, however, that nothing in this paragraph affects the
12 enforceability of the covenants not to sue set forth in Section
13 XXII (Covenants Not to Sue by Plaintiffs).

14
15 XXV. ACCESS TO INFORMATION

16 101. Settling Defendants shall provide to EPA and the
17 State, upon request, copies of all documents and information
18 within their possession or control or that of their contractors
19 or agents relating to the Work or to the implementation of this
20 Consent Decree, including, but not limited to, sampling,
21 analysis, chain of custody records, manifests, trucking logs,
22 receipts, reports, sample traffic routing, correspondence, or
23 other documents or information related to the Work. Settling
24 Defendants shall also make available to EPA and the State, for
25 purposes of investigation, information gathering, or testimony,
26 relating to the Work or implementation of the Consent Decree

1 their employees, agents, or representatives with knowledge of
2 relevant facts concerning the performance of the Work.

3 102. a. Settling Defendants may assert business
4 confidentiality claims covering part or all of the documents or
5 information submitted to Plaintiffs under this Consent Decree to
6 the extent permitted by and in accordance with Section 104(e)(7)
7 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
8 Documents or information determined to be confidential by EPA
9 will be afforded the protection specified in 40 C.F.R. Part 2,
10 Subpart B. If no claim of confidentiality accompanies documents
11 or information when they are submitted to EPA and the State, or
12 if EPA has notified Settling Defendants that the documents or
13 information are not confidential under the standards of Section
14 104(e)(7) of CERCLA, 42 U.S.C. § 9607(e)(7) the public may be
15 given access to such documents or information without further
16 notice to Settling Defendants.

17 b. The Settling Defendants may assert that certain
18 documents, records and other information are privileged under the
19 attorney-client privilege or any other privilege recognized by
20 federal law. If the Settling Defendants assert such a privilege
21 in lieu of providing documents, they shall provide the Plaintiffs
22 with the following: (1) the title of the document, record, or
23 information; (2) the date of the document, record, or
24 information; (3) the name and title of the author of the
25 document, record, or information; (4) the name and title of each
26 addressee and recipient; (5) a description of the contents of the

1 document, record, or information: and (6) the privilege asserted
2 by Settling Defendants. The Plaintiffs retain the right to
3 challenge any such claim of privilege. No documents, reports, or
4 other information created or generated pursuant to the
5 requirements of the Consent Decree shall be withheld on the
6 grounds that they are privileged.

7 103. No claim of confidentiality shall be made with
8 respect to any data, including, but not limited to, all sampling,
9 analytical, monitoring, hydrogeologic, scientific, chemical, or
10 engineering data, or any data or factual information evidencing
11 conditions related to the work or implementation of the Consent
12 Decree contained in otherwise privileged documents.

13
14 XXVI. RETENTION OF RECORDS

15 104. Until ten (10) years after the Settling Defendants'
16 and the De Minimis Defendants' receipt of EPA's notification
17 pursuant to Paragraph 52(b) of Section XV (Certification of
18 Completion of the Work), each Settling Defendant and each De
19 Minimis Defendant shall preserve and retain all records and
20 documents now in its possession or control or which come into its
21 possession or control that relate in any manner to the
22 performance of the Work or that relate to the liability of any
23 person for response actions conducted and to be conducted at the
24 Site, regardless of any corporate retention policy to the
25 contrary. Until ten (10) years after the Settling Defendants'
26 and the De Minimis Defendants' receipt of EPA's notification

1 pursuant to Paragraph 52(b) of Section XV (Certification of
2 Completion), Settling Defendants shall also instruct their
3 contractors and agents to preserve all documents, records, and
4 information of whatever kind, nature or description relating to
5 the performance of the Work.

6 105. At the conclusion of this document retention period,
7 Settling Defendants and the De Minimis Defendants shall notify
8 the United States and the State at least ninety (90) days prior
9 to the destruction of any such records or documents, and, upon
10 request by the United States or the State, Settling Defendants
11 and De Minimis Defendants shall deliver any such records or
12 documents to EPA or the State. The Settling Defendants and the
13 De Minimis Defendants may assert that certain documents, records
14 and other information are privileged under the attorney-client
15 privilege or any other privilege recognized by federal law. If
16 the Settling Defendants or De Minimis Defendants assert such a
17 privilege, they shall provide the Plaintiffs with the following:
18 (1) the title of the document, record, or information; (2) the
19 date of the document, record, or information; (3) the name and
20 title of the author of the document, record, or information; (4)
21 the name and title of each addressee and recipient; (5) a
22 description of the subject of the document, record, or
23 information; and (6) the privilege asserted by Settling
24 Defendants or De Minimis Defendants. The Plaintiffs retain the
25 right to challenge any such claim of privilege. No documents,
26 reports, or other information created or generated pursuant to

1 the requirements of the Consent Decree shall be withheld on the
2 grounds that they are privileged.

3 106. Each Settling Defendant and each De Minimis
4 Defendant hereby certifies, individually, that it has not to the
5 best of its knowledge altered, mutilated, discarded, destroyed or
6 otherwise disposed of any records, documents or other information
7 materially relating to its potential liability regarding the Site
8 since notification of potential liability by the United States or
9 the State or the filing of suit against it regarding the Site and
10 that it has fully complied with any and all EPA requests for
11 information pursuant to Section 104(e) and 122(e) of CERCLA, 42
12 U.S.C. §§ 9604(e) and 9622(e).

13
14 XXVII. NOTICES AND SUBMISSIONS

15 107. Whenever, under the terms of this Consent Decree,
16 written notice is required to be given or a report or other
17 document is required to be sent by one party to another, it shall
18 be directed to the individuals at the addresses specified below,
19 unless those individuals or their successors give notice of a
20 change to the other parties in writing. All notices and
21 submissions shall be considered effective upon receipt, unless
22 otherwise provided. Written notice as specified herein shall
23 constitute complete satisfaction of any written notice
24 requirement of the Consent Decree with respect to the United
25 States, EPA, the State, and the Settling Defendants,
26 respectively.

Agencies

1 As to the United States:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611
6 Ben Franklin Station
7 Washington, D.C. 20044
8 Re: DJ #90-11-3-128F

6 and

7 Director, Waste Management Division
8 United States Environmental Protection Agency
9 Region 10
10 1200 Sixth Avenue, HW-113
11 Seattle, Washington 98101

10

11 As to EPA:

12 Director, Waste Management Division
13 United States Environmental Protection Agency
14 Region 10
15 1200 Sixth Avenue, HW-113
16 Seattle, Washington 98101

15 Regional Counsel
16 EPA Office of Regional Counsel
17 United States Environmental Protection Agency
18 Region 10
19 1200 Sixth Avenue, HW-113
20 Seattle, Washington 98101

18 ~~Beth Feeley~~ *Sean Sheldrake*
19 EPA Project Coordinator
20 United States Environmental Protection Agency
21 Region 10
22 1200 Sixth Avenue, HW-113
23 Seattle, Washington 98101

22

23

24

25

26

27

28

1 As to the State:

2 Curt Fransen
3 Office of Attorney General
4 State of Idaho
5 1410 N. Hilton
6 2nd Floor
7 Boise, Idaho 83706
8
9 State Project Coordinator
10 Idaho Department of Health & Welfare
11 Division of Environmental Quality
12 1410 North Hilton
13 Boise, Idaho 83720-9000
14

10 As to the Settling Defendants:

11 Augustus Kinsolving, General Counsel
12 ASARCO Incorporated
13 180 Maiden Lane
14 New York, New York 10038

15 Michael Thorp
16 Heller, Ehrman, White & McAuliffe
17 701 Fifth Avenue, Suite 6100
18 Seattle, Washington 98104

19 Hecla Mining Company
20 Attention: General Counsel
21 6500 Mineral Drive
22 Box C-8000
23 Coeur d'Alene, Idaho 83814-1931

24 Elizabeth H. Temkin, Esq.
25 Ballard, Spahr, Andrews & Ingersoll
26 Representing Hecla Mining Company
27 1225 17th Street, Suite 2300
28 Denver, Colorado 80202

29 John Simko
30 Sunshine Precious Metals, Inc.
31 815 Park Blvd.
32 Boise, Idaho 83702

1 Fred M. Gibler, Esq.
2 Evans, Keane, Koontz & Gibler
3 Representing Sunshine Precious Metals, Inc.
4 111 Main Street
5 P.O. Box 659
6 Kellogg, Idaho 83837

7
8 As to the De Minimis Defendants:

9 William F. Boyd
10 Coeur d'Alene Mines Corporation
11 400 Coeur d'Alene Mines Building
12 505 Front Avenue
13 Coeur d'Alene, Idaho 83814

14
15 As to EPA Project Coordinator:

16 Beth Feeley
17 EPA Project Coordinator
18 United States Environmental Protection Agency
19 Region 10
20 1200 Sixth Avenue, HW-113
21 Seattle, Washington 98101
22 (206) 553-8659
23 (206) 553-0124 (FAX)

24
25 As to State Project Coordinator:

26 State Project Coordinator
27 Idaho Department of Health & Welfare
28 Division of Environmental Quality
1410 North Hilton
Boise, Idaho 83720-9000
(208) 334-5860
(208) 334-0576 (FAX)

1 As to Settling Defendants' Project Coordinators

2 ASARCO, Incorporated
3 J. Chris Pfahl, Chief Engineer
4 516 Bank Street
5 P.O. Box 440
6 Wallace, Idaho 83873
7 (208) 752-1116
8 (208) 752-6151 (FAX)
9
6 Hecla Mining Company
7 Gary Gamble
8 6500 Mineral Drive
9 Coeur d'Alene, Idaho 83814-8788
10 (208) 769-4100
11 (208) 7694122 (FAX)
12

10 XXVIII. EFFECTIVE DATE

11 108. The effective date of this Consent Decree shall be
12 the date upon which this Consent Decree is entered by the Court,
13 except as otherwise provided herein.
14

15 XXIX. RETENTION OF JURISDICTION

16 109. This Court retains jurisdiction over both the
17 subject matter of this Consent Decree and the Settling Defendants
18 and the De Minimis Defendants for the duration of the performance
19 of the terms and provisions of this Consent Decree for the
20 purpose of enabling any of the Parties to apply to the Court at
21 any time for such further order, direction, and relief as may be
22 necessary or appropriate for the construction or modification of
23 this Consent Decree, or to effectuate or enforce compliance with
24 its terms, or to resolve disputes in accordance with Section XX
25 (Dispute Resolution) hereof.
26

1 XXX. ATTACHMENTS

2 110. The following attachments are attached to and
3 incorporated into and made an enforceable part of this Consent
4 Decree:

5 "Attachment A" is the RODs.

6 "Attachment B" is the SOW.

7 "Attachment C" is the Bunker Hill Superfund Site Allocation
8 Map.

9 "Attachment D" is the Institutional Control Program Document.

10 "Attachment E" is the Final Residential Yards RDR.

11 "Attachment F" is the Draft Page Pond Closure RDR.

12 "Attachment G" is the Final Rights-of-Way RDR.

13 "Attachment H" is the Final Commercial Properties RDR.

14 "Attachment I" is the Final Water Well Closure.

15 "Attachment J" is the Criteria for Financial Assurance.

16 "Attachment K" is the Memorandum of Agreement between EPA and
the State.

17 "Attachment L" is the Memorandum of Agreement between EPA and
18 Panhandle Health District.

19 "Attachment M" is the Trust Declaration by the State of Idaho.

20 XXXI. COMMUNITY RELATIONS

21 111. Settling Defendants shall cooperate with EPA and the
22 State in providing information regarding the Work to the public.
23 As requested by EPA or the State, Settling Defendants shall
24 participate in the preparation of such information for
25 dissemination to the public and in public meetings which may be
26

1 held or sponsored by EPA or the State to explain activities at or
2 relating to the Site.

3
4 XXXII. MODIFICATION

5 112. Schedules specified in the SOW, RDRs and other
6 deliverables for completion of the Work may be modified by
7 agreement of EPA, in consultation with the State, and the
8 Settling Defendants. All such modifications shall be made in
9 writing.

10 113. No material modifications shall be made to the SOW
11 and RDRs without written notification to and written approval of
12 the United States, the Settling Defendants and the Court. Prior
13 to providing its approval to any modification, the United States
14 will provide the State with a reasonable opportunity to review
15 and comment on the proposed modification. Modifications to the
16 SOW and the RDRs that do not materially alter those documents may
17 be made by written agreement between EPA, after providing the
18 State with a reasonable opportunity to review and comment on the
19 proposed modification, and the Settling Defendants.

20 114. Nothing in this Decree shall be deemed to alter the
21 Court's powers pursuant to Federal Rules of Civil Procedure 60,
22 or otherwise.

23
24 XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

25 115. This Consent Decree shall be lodged with the Court
26 for a period of not less than thirty (30) days for public notice

1 and comment in accordance with Section 122(d)(2) of CERCLA,
2 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States
3 and the State reserve the right to withdraw or withhold their
4 consent if the comments regarding the Consent Decree disclose
5 facts or considerations which indicate that the Consent Decree is
6 inappropriate, improper, or inadequate. Settling Defendants and
7 De Minimis Defendants consent to the entry of this Consent Decree
8 in the form presented without further notice.

9 116. If for any reason the Court should decline to
10 approve this Consent Decree in the form presented, this agreement
11 is voidable at the sole discretion of any Party and the terms of
12 the agreement may not be used as evidence in any litigation
13 between the Parties.

14 XXXIV. SIGNATORIES/SERVICE

15 117. Each undersigned representative of a Settling
16 Defendant and each De Minimis Defendant to this Consent Decree
17 and the Assistant Attorney General for Environment and Natural
18 Resources of the Department of Justice and the State signatory
19 certifies that he or she is fully authorized to enter into the
20 terms and conditions of this Consent Decree and to execute and
21 legally bind such party to this document.

22 118. Each Settling Defendant and each De Minimis
23 Defendant hereby agree not to oppose entry of this Consent Decree
24 by this Court or to challenge any provision of this Consent
25 Decree unless the United States has notified the Settling
26

Defendants and the De Minimis Defendants in writing that it no longer supports entry of the Consent Decree.

119. Each Settling Defendant and each De Minimis Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants and De Minimis Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6
7 FOR THE UNITED STATES OF AMERICA

8
9 Date: 9/12/94

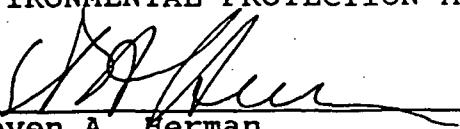
10 Lois J. Schiffer
11 Acting Assistant Attorney General
12 Environment and Natural Resources
13 Division
14 U.S. Department of Justice
15 Washington, D.C. 20530

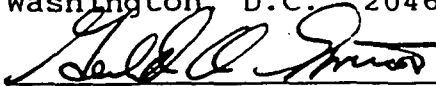
16 Peter Mounsey and Thomas Swegle
17 Environmental Enforcement Section
18 Environment and Natural Resources
19 Division
20 U.S. Department of Justice
21 Washington, D.C. 20530

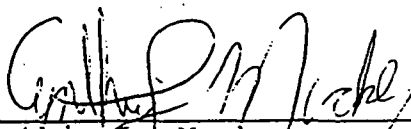
22 Celeste K. Miller
23 CELESTE K. MILLER
24 Assistant United States Attorney
25 District of Idaho
26 U.S. Department of Justice

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6 FOR THE UNITED STATES
7 ENVIRONMENTAL PROTECTION AGENCY

8 
9 Steven A. Herman
10 Assistant Administrator for
11 Enforcement
12 U.S. Environmental Protection
13 Agency
14 401 M Street, S.W.
15 Washington, D.C. 20460

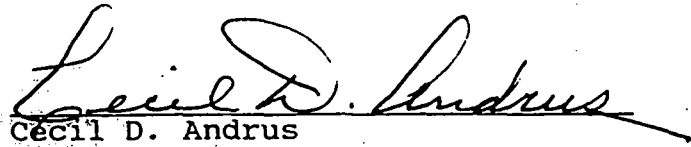
16 
17 Gerald A. Emison
18 Acting Regional Administrator
19 Region 10
20 U.S. Environmental Protection
21 Agency
22 1200 Sixth Avenue
23 Seattle, Washington 98101


24 
25 Cynthia L. Mackey
26 Assistant Regional Counsel
27 U.S. Environmental Protection
28 Agency
Region 10
1200 Sixth Avenue, SO-155
Seattle, Washington 98101

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6
7
8 FOR THE STATE OF IDAHO

9 Date: 3-1-94

10 
11 Cecil D. Andrus
12 Governor
13 State of Idaho
14 State House
15 Boise, Idaho 83720

16 
17 Curt A. Fransen
18 Deputy Attorney General
19 Office of Attorney General
20 State of Idaho
21 1410 N. Hilton
22 2nd Floor
23 Boise, Idaho 83706

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6 FOR ASARCO, INCORPORATED

7 Date: 2/18/94

8 Michael O. Varner
9 Vice President, Environmental
10 Operations
11 ASARCO Incorporated
12 180 Maiden Lane
13 New York, New York 10038-4991

14 Agent Authorized to Accept Service on Behalf of Above-signed
15 Party:

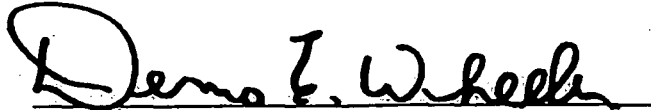
16 Prentice Hall Legal & Financial
17 Services
18 15 Columbus Circle
19 New York, New York 10023-7773

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6 FOR COEUR D'ALENE MINES CORPORATION

7 Date:

Feb. 14, 1994



8 Dennis E. Wheeler
9 Chairman, President and Chief
10 Executive Officer
11 Coeur d'Alene Mines Corporation
12 505 Front Avenue
13 Coeur d'Alene, Idaho 83814

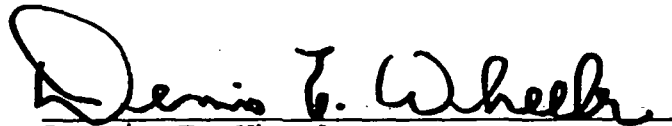
14 Agent Authorized to Accept Service on Behalf of Above-signed
15 Party:

16 William F. Boyd
17 Corporate Counsel and Secretary
18 Coeur d'Alene Mines Corporation
19 505 Front Avenue
20 Coeur d'Alene, Idaho 83814
21 (208) 667-3511

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6 FOR CALLAHAN MINING CORPORATION

7 Date: Feb. 11, 1994



8 Dennis E. Wheeler
9 Chairman, President and Chief
10 Executive Officer
11 Coeur d'Alene Mines Corporation
12 505 Front Avenue
13 Coeur d'Alene, Idaho 83814

14 Agent Authorized to Accept Service on Behalf of Above-signed
15 Party:

16 William F. Boyd
17 Corporate Counsel and Secretary
18 Coeur d'Alene Mines Corporation
19 505 Front Avenue
20 Coeur d'Alene, Idaho 83814
21 (208) 667-3511

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6 FOR HECLA MINING COMPANY

7 Date: February 18, 1994

8 Michael B. White
9 Michael B. White
10 Vice President/General Counsel
11 6500 Mineral Drive
12 Box C-8000
13 Coeur d'Alene, Idaho 83814-1931

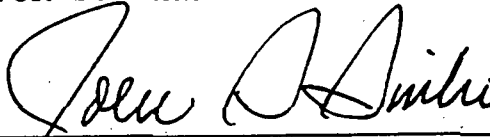
14 Agent Authorized to Accept Service on Behalf of Above-signed
15 Party:

16 Michael B. White
17 Vice President/General Counsel
18 6500 Mineral Drive
19 Box C-8000
20 Coeur d'Alene, Idaho 83814-1931
21 (208) 769-4159

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6 FOR SUNSHINE PRECIOUS METALS

7 Date: FEB 15, 1994



8 John S. Simko, President
9 815 Park Blvd.
10 Boise, Idaho 83702

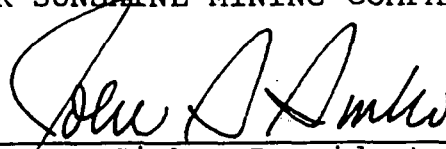
11 Agent Authorized to Accept Service on Behalf of Above-signed
12 Party:

13 John S. Simko
14 President
15 815 Park Blvd.
16 Boise, Idaho 83702
17 (208) 335-0660
18
19
20
21
22
23
24
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Asarco, Incorporated, Coeur d'Alene
3 Mines Corporation, Callahan Mining Corporation, Hecla Mining
4 Company, Sunshine Precious Metals, and Sunshine Mining Company,
5 relating to the Bunker Hill Superfund Site.

6 FOR SUNSHINE MINING COMPANY

7 Date: Feb 15, 1994

8 
9 John S. Simko, President
815 Park Blvd.
Boise, Idaho 83702

10
11 Agent Authorized to Accept Service on Behalf of Above-signed
12 Party:

13 John S. Simko
14 President
15 815 Park Blvd.
16 Boise, Idaho 83702
17 (208) 335-0660
18
19
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ATTACHMENT D TO THE CONSENT DECREE
INSTITUTIONAL CONTROLS PROGRAM DOCUMENT

1. **Introduction.** The purpose of this document is to list and describe the responsibilities of the Settling Defendants with respect to the implementation of the Institutional Controls Program (ICP) for Area I¹ of the Site. The ICP for the Site is generally described in the following documents: ICP Regulatory Component Document (Murray Lamont & Associates, Inc., 1993) ("ICP Regulatory Document"); An Evaluation of Institutional Controls for the Populated Areas of the Bunker Hill Superfund Site (Draft) (Panhandle Health District, 1991); the Panhandle Health District Environmental Health Code; and supporting amendments to the following documents as proposed or as ultimately adopted for the Site: the Model Subdivision Ordinance, storm water regulations, and changes to existing comprehensive plans and land use regulations. These documents clarify and refine the requirements for the ICP outlined in the Records of Decision for the Site. Although the ICP applies to the entire Site, the sole obligation of the Settling Defendants is to fund and/or implement the following eight program elements as they apply to Area I, as described below. With respect to these program elements, the Panhandle Health

¹ "Area I" means that area for which Settling Defendants have responsibility under the Consent Decree, as delineated on the Bunker Hill Superfund Site Allocation Map, Attachment C to the Consent Decree.

District (PHD) will serve as the clearinghouse for citizen requests for ICP information or services.

2. **Program Elements.** The ICP elements to be funded and/or implemented by the Settling Defendants consist of the following eight programs as they relate to Area I. Each of these elements as they relate to Area I shall be annually funded and/or implemented by the Settling Defendants until certification of all Remedial Actions. Upon certification of all Remedial Actions, each of these program elements as they relate to Area I shall be permanently funded by the Settling Defendants in accordance with the terms of section 3(d)(ii) herein.

a. **Administration.** The Settling Defendants shall fund in accordance with section 3 the administrative oversight and monitoring of the ICP, including permits and inspection programs, budgeting, sampling, enforcement, public relations, coordination with local governments, coordination of material supply programs and delivery and disposal systems, and other administrative duties required for implementation of the ICP in Area I. The Settling Defendants shall fund the reasonable costs, including attorneys' fees, of any nuisance or other actions brought by PHD to abate lead related releases from the two following properties

located outside of Area I: [list tax parcel ID's for Ross/Joy and Magnuson properties].

- b. **Education.** The Settling Defendants shall fund in accordance with section 3 an education program consisting of four main elements: pamphlets, brochures, multi-media information, and information enclosed with property tax and utility billings or other available delivery mechanisms.
- c. **Health Intervention.** Settling Defendants shall fund in accordance with section 3 the following elements of the Health Intervention Program: counseling, elementary education, and physician education. Blood lead screening is an important component of the Health Intervention Program; however, it will not be part of the Settling Defendants' obligations under this Consent Decree.
- d. **Interior Material Supply Program.** This program will assist homeowners and residential tenants in the establishment of barriers within the home. Until the certification of all Remedial Actions, the Settling Defendants will provide HEPA vacuums, coveralls, and respirators for distribution by PHD, and plastic sheeting and gravel for interior remodeling projects carried out in Area I in accordance with the ICP Regulatory Document upon

receiving a request by the PHD. After the certification of all Remedial Actions, PHD will assume full responsibility for implementation of the program using funding provided by the Settling Defendants in accordance with section 3.

- e. **Exterior Material Supply Program.** Until certification of all Remedial Actions, Settling Defendants will provide and deliver clean top soil and crushed rock, as defined by the Residential Soils RDR, for exterior residential projects in Area I requiring no more than one cubic yard of material which are carried out in accordance with the ICP Regulatory Document. After the certification of all Remedial Actions, PHD will assume full responsibility for implementation of the program using funding provided by the Settling Defendants program in accordance with section 3. At the start of the 1994 construction season, the Settling Defendants will also make 2500 cubic yards of clean soil available to the PHD for use in implementing the ICP.
- f. **Collection Program.** Until the certification of all Remedial Actions, at the request of citizens forwarded by the PHD, the Settling Defendants will collect, store and transport up to one cubic yard

of soil, tailings and/or gravel from small residential projects within Area I to a repository. After the certification of all Remedial Actions, the Settling Defendants will either continue to provide collection services or provide funding to the PHD to continue the program in accordance with section 3.

- g. **Monitoring and Repair.** The Settling Defendants will monitor and repair remediated areas as provided in the Residential Yards, Commercial Properties, and Rights-of-Way RDRs. Following the certification of completion of a Remedial Action, as defined in the SOW, the Settling Defendants shall, in accordance with section 3, fund and the PHD shall perform repairs of remediated areas in such certified areas in accordance with the ICP Regulatory Document and the Environmental Health Code.
- h. **Project Disposal and Repository.** The Settling Defendants will make a soils repository available for all projects within Area I requiring the disposal of contaminated material which are carried out in accordance with the ICP Regulatory Document. Until certification of all Remedial Actions, the Settling Defendants will maintain and operate a

repository. After certification of all Remedial Actions, the Settling Defendants will continue to provide a repository for such projects in Area I to be operated by the PHD using permanent funding as described in section 3(d)(iii).

3. **Program Funding.**

a. **Oversight Committee.**

i. **Duties.** An Oversight Committee shall be established to monitor ICP expenditures by PHD, to approve annual budgets, and to establish permanent funding as provided in section 3(d)(iii). The Oversight Committee shall not have the authority to expand the scope of the duties of the Settling Defendants under this Consent Decree, but shall have the authority to redirect resources provided by the Settling Defendants to accomplish the purposes of the ICP. The Oversight Committee shall also have authority to review the ICP in its entirety and make recommendations regarding funding or program elements not to be provided by the Settling Defendants.

ii. **Members.** The Oversight Committee shall consist of three persons: one representative each from EPA, the Settling Defendants, and the State of Idaho.

The Oversight Committee shall meet at a minimum once per quarter at the Site to carry out its duties. Disputes regarding the annual or permanent financing of the ICP related to Area I shall be resolved under the Dispute Resolution provisions of Section XX of the Consent Decree or the Memorandum of Agreement between the State of Idaho and EPA, Attachment K to the Consent Decree, as appropriate. Disputes regarding the financing of funding or activities other than those to be provided by the Settling Defendants shall be resolved according to the terms and conditions applicable to such other funding or activity.

- b. Annual Budgets. Each year no later than March 1, the PHD will prepare an annual budget covering the entire ICP for the following year and submit it to the Oversight Committee. The annual budget submittal will indicate, in accordance with this Attachment D, those Area I elements proposed to be funded and the level of funding by the Settling Defendants. The first year budget shall be as provided in section (3)(d)(i). Beginning in the second year, the Oversight Committee will evaluate the proposed budget each year based on the scope of the ICP and the following factors: number of

inspections to be performed; average time required for inspections; permits anticipated and work load by permit type; number of people served by the health intervention program; contacts planned in connection with the supply and collection programs; educational programs by type; relative levels of services provided between Area I and other areas of the Site; and other work unit data on which the budget is based. Data from previous years will be reviewed in evaluating the importance of various activity levels in regard to budget needs. In the event of a dispute regarding the proposed annual budget, the previous year's budget will be used until the dispute is resolved.

- c. **Reporting by PHD.** In order to assist with the budgeting and oversight process, the PHD shall maintain thorough accounting records of its activities in implementing the ICP, including personnel hours by type of activity (program elements), mileage, telephone logs, equipment costs and other expenses and receipts. This information will include a breakdown of costs incurred in implementing the ICP in Area I, and shall be used to prepare monthly budget status reports comparing actual spending to budgeted amounts. Summaries

thereof shall be submitted quarterly to the Oversight Committee by PHD. At the request of, and as funded by, the Settling Defendants, there shall be an annual audit of the program conducted by independent certified public accountants and directed by the Oversight Committee. In any case, accounting information regarding the ICP shall be made available to the Settling Defendants upon reasonable request.

d. **FRP Funding.**

- i) **Start-up Funding.** The PHD has proposed, and the parties have approved, a first year total start-up budget of \$224,100 plus \$28,000 in capital costs. The Settling Defendants have agreed to reimburse the entity providing the funding within sixty days of the entry of the Consent Decree for any of these budgeted start-up costs incurred and paid after the lodging of the Consent Decree but prior to its entry by the Court.
- ii) **Annual Funding.** Until permanent funding is established as set forth below, the Settling Defendants shall pay only those costs actually incurred in implementing the eight ICP program elements in Area I. By July 1 of each year,

the Settling Defendants shall pay the estimated budget for the first two quarters of PHD's fiscal year. By the first day of each subsequent quarter, payments shall be made such that the budgeted amounts will be reconciled each quarter thereafter with the amounts actually incurred in the preceding quarters.

iii) Permanent Funding. Within sixty days of certification of all Remedial Actions, the Settling Defendants shall provide permanent funding for the program elements of the ICP as they relate to Area I. The total amount of permanent funding to be provided by Settling Defendants shall be calculated, in accordance with this Attachment D, based on actual expenditure and activity level history, the then current scope and program elements of the ICP, and projected activity levels and necessary contingency amounts for the future. The Settling Defendants' percentage of the total amount of permanent funding shall be calculated using the historical breakdown of costs prepared by the PHD pursuant to Section 3(c) above. The funds provided by the

Settling Defendants shall be placed in a trust
fund or similar mechanism.

RECORD OF DECISION

**Bunker Hill Mining and Metallurgical Complex
Residential Soils Operable Unit
Shoshone County, Idaho**

August 1991

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RECORD OF DECISION

Bunker Hill Mining and Metallurgical Complex

Shoshone County, Idaho

September 1992

T17223

December 10, 1993

BUNKER HILL
REMEDIAL DESIGN and REMEDIAL ACTION
AREA I
STATEMENT OF WORK

1.0 INTRODUCTION, DEFINITIONS, AND GENERAL PROVISIONS

1.1 Introduction

This Statement of Work ("SOW") details the on-site activities to be undertaken by the Settling Defendants in compliance with the requirements of this Consent Decree. The Work shall be consistent with the decisions set forth in the Bunker Hill 1992 Record of Decision ("1992 ROD") and the 1991 Residential Soils ROD ("1991 ROD") attached as Appendix A to the Consent Decree and performed pursuant to the Consent Decree.

The Work shall be structured to allow the most expeditious implementation of actions in a coordinated sequence that integrates remediation goals and minimizes short-term impacts and disruptions to the affected communities. The Work shall be organized in a series of Elements, described below, having individual Objectives and Performance Standards that recognize the various media and sub-area conditions at the site. The Elements of Work may be integrated, as appropriate, during remedial action to provide an efficient annual comprehensive schedule. The elements are further described in Draft or Final Remedial Design Reports (RDRs) which are attached to the Consent Decree. Only those portions of the individual elements which are scheduled to occur within Area I, as delineated on the Bunker Hill Superfund Site Allocation Map, attached as Attachment C to the Consent Decree (Allocation Map), are included in the Work.

In addition to the Elements of Work, an Institutional Controls Program (ICP) will be implemented as part of the remedy. The ICP-related responsibilities of the Settling Defendants are set forth in Attachment D of the Consent Decree. The ICP serves to maintain the long-term effectiveness of those remedial actions addressing the communities.

1.2 Definitions

Terms used in this SOW are as defined below or, as to others, by this Consent Decree, CERCLA and the NCP.

1.2.1 "Clean Soil" shall contain mean concentrations less than 100 ppm lead, 100 ppm arsenic and 5 ppm cadmium. No single sample shall exceed 150 ppm lead.

1.2.2 "High Risk Yards" means:

- Homes where children six years of age and under are in residence.
- Homes with pregnant women in residence.
- Licensed Day Care Centers.

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- Homes where the most recent blood lead survey indicates that children in residence have a blood lead level equal to or greater than 10 $\mu\text{g}/\text{dl}$ and the Panhandle Health District (PH) has determined that the yard soil exposure is a significant exposure pathway.

1.2.3 "Reasonably Segregable Areas" are defined as follows and include all remedial actions for each portion of a SOW Element of Work to be conducted within that area.

- The city of Pinehurst (including the Dalton Subdivision)
- The city of Smelterville (including 3 parcels of Asarco owned commercial property commonly known as the Old Lions Club Lease, Linfor Lumber, and Theater Pit).
- The city of Wardner
- The portion of the city of Kellogg located on the northern side of I-90
- The portion of the city of Kellogg located on the southern side of I-90
- The unincorporated community of Page
- The unincorporated residential areas of Elizabeth Park, Ross Ranch and Montgomery Gulch
- Page Pond

1.2.4 "Contaminated Soils" means those contaminated soils which are removed during remediation of Area I for disposal at the Page Pond Repository or other EPA-approved disposal site.

1.2.5 "Sensitive Populations" include children between 0 and 12 years of age and pregnant women.

1.3 General Provisions

1.3.1 The Work activities associated with this SOW are final remedial actions. Remedial actions outlined for Area I in this Statement of Work shall meet Performance Standards.

1.3.2 The Settling Defendants will begin performance of the Work as described in Section 5.0 of this document. Settling Defendants will not, however, be required to commence construction or sampling until this Consent Decree has been entered by the Court or unless such construction or sampling is otherwise ordered by the Court.

1.3.3 Each Element of Work, or a portion of an Element of Work shall be integrated and coordinated in a manner consistent with all other Elements of Work under this Consent Decree, and with

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other operations and/or tasks, including, but not limited to, emergency response activities.

- 1.3.4 Any repairs required to community infrastructure, such as roads and utilities, due to the implementation of the Work, shall be performed.
- 1.3.5 Repairs to private property shall be as specified in the Draft Residential Yards RDR.
- 1.3.6 Whenever Settling Defendants are obligated to perform an activity under this SOW, they may perform the activity themselves or engage a contractor (or contractors) accepted by EPA, unless other arrangements are mutually agreed upon, in fulfillment of their obligation.
- 1.3.7 During remedial construction activities, dust control measures shall be implemented to control the transport of contaminated material. Dust control activities shall include, but not be limited to, engineering and construction practices, the use of water to wet down areas or polymeric, chemical or physical surface sealers for temporary dust control.
- 1.3.8 Appropriate controls shall be used in Area I to prevent exposures during performance of the Work. Access controls shall include, but not be limited to, fencing and signs. Access control shall be maintained in all areas where it currently exists.
- 1.3.9 Appropriate controls shall also be applied in Area I, as necessary, to restrict access to potential source areas, to control transport of contaminants and to control exposures to contaminants of concern during construction activities.
- 1.3.10 The release of contaminants during remedial construction activities shall also be controlled. This shall include, but not be limited to, the management of runoff to minimize sediment transport to surface water. Storm water management during remedial implementation shall be consistent with all Federal, State and local requirements.
- 1.3.11 With respect to the Page Pond Element of Work, Best Management Practices shall be employed during remedial actions and the practice of not scheduling Work activities during high flow conditions shall be continued.
- 1.3.12 The objective of routine site maintenance is to ensure that facilities and control measures at the Site continue to be effective and achieve Performance Standards over the long term.
- 1.3.13 Work performed by Settling Defendants for the Page Pond Element of Work shall minimize operation and maintenance (O&M) requirements. A comprehensive post-closure O&M program will be defined during Remedial Action through preparation of a post-closure O&M Plan for the Page Pond Element of Work. It is the

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expectation of the Parties that the ICP will accomplish the O&M requirements for the other portions of Area I.

- 1.3.14 In the event of any action or occurrence arising in connection with the performance of the Area I Work which causes or threatens a release of Waste Material at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Defendants shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the Project Coordinators for EPA and the State, or, if they are unavailable, their alternates. Where such a threat is identified, the Emergency Response provisions of the Consent Decree will apply. Where the EPA or State of Idaho project coordinator or designee makes a preliminary determination that substantial emergency property damage is threatened or has occurred due to remediation activities, the Settling Defendants will take action as required in the Draft Residential Yards RDR.
- 1.3.15 The Settling Defendants shall respond to conditions related to the Work identified by EPA as posing an immediate hazard within 24 hours of notice for the Page Pond Element of Work unless otherwise provided in the Consent Decree.

2.0 DESCRIPTION OF WORK TO BE PERFORMED, PERFORMANCE STANDARDS AND OBJECTIVES

This Section sets forth the Elements and Components of Work to be performed pursuant to this Consent Decree and states the Objectives and Performance Standards for the Work. These elements address that portion of the Work to be conducted by the Settling Defendants, within the Area I boundaries presented in the Allocation Map. The following Elements of Work are intended to provide a synopsis of the pertinent remedial actions that are explained in additional detail in the 1991 ROD and the 1992 ROD. The Draft or Final Remedial Design Reports, Attachments E through I to the Consent Decree, describe the Work in more detail.

A primary objective for remediation of the Site is the reduction of blood leads in the population; specifically, reduction in child blood lead concentrations so that 95% or more of the children tested in the blood lead survey have blood lead concentrations of less than 10 $\mu\text{g}/\text{dL}$ and less than one percent have blood lead concentrations greater than 15 $\mu\text{g}/\text{dL}$. This objective as well as related objectives for environmental transport of site contaminants shall be addressed through a series of remedial actions for various subareas of the Site. The remedial actions described below, as well as those to be conducted by others, comprise a site-wide comprehensive remedy consisting of a combination of treatment, containment, engineering and institutional controls.

2.1 Page Pond Element of Work

The Page Pond Element of Work is described in the Draft Page Pond RDR. The Page Pond Element of Work includes the following two Components:

- Page Pond Component
- Humboldt and Grouse Creeks Component

2.1.1 Page Pond Component

The objective of the Work is to limit releases from this source by consolidating, capping and revegetating.

2.1.1.1 Performance Standards for this Component of Work are as follows:

- 2.1.1.1.1 Portions of the exposed tailings located in shallow areas such as the West beach of the West Page Swamp area and the areas surrounding the decant lines, shall be removed, to the extent technically feasible, and subsequently placed on the Page Pond benches for use as a sub-base for a vegetated cover. To the extent that tailings in these and other shallow areas cannot be removed, the areas shall be covered with a minimum of 12 inches of clean soil and revegetated. All other areas shall be submerged under

approximately 2 feet of water. To the maximum extent practicable, these water levels shall be maintained throughout the year. The amount of material to be removed from shallow areas such as the West beach of the West Page Swamp and the areas surrounding the decant lines shall be determined during remedial design and shall consider the feasibility of effectively removing and relocating tailings deposits, including tailings moisture content and texture, current vegetated status, surficial soil contaminant concentrations, water levels, and habitat. The design shall be subject to EPA approval.

- 2.1.1.1.2 Page Pond benches shall be covered with a minimum of six inches of Contaminated Soils, regraded to promote runoff, and revegetated.
- 2.1.1.1.3 Page Pond impoundment dikes shall be regraded to provide slope stability and then revegetated after placement of a minimum of six inches of Clean Soil. Contaminated Soil may be used providing access is adequately controlled, as determined by EPA.
- 2.1.1.1.4 Adequate controls shall be provided to prevent public access to the remedial actions performed at Page Pond.
- 2.1.1.1.5 Wetlands associated with the Page Pond areas shall be monitored for sediment and water quality. Water quality sampling will occur twice annually at two inflow and two outflow points for the year prior to and the five years following remediation. Sediment sampling will be consistent with the 1993 transect sampling program and will occur immediately after remediation and again at five years after remediation. Water and sediment sampling requirements are presented in the Draft Page Pond RDR.
- 2.1.1.1.6 Biomonitoring shall be conducted at the Page Pond Swamps in the year prior to remediation and for the next five years after remediation. The monitoring shall consist of bird surveys and mammal tissue sampling. Biomonitoring requirements, including provisions for long-term monitoring, are presented in the Draft Page Pond RDR.

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2.1.2 Humboldt and Grouse Creeks Component

The objective of this Component is to limit the contamination of these surface streams by preventing contact with Page Pond area tailings. Only those portions of Humboldt and Grouse Creeks within Area I boundaries, as delineated by the Allocation Map, are addressed by this Component.

2.1.2.1 Performance Standards for this Component of Work are as follows:

2.1.2.1.1 Humboldt and Grouse Creeks shall be isolated, to the degree practicable, from contact with tailings accumulations by the use of diversions and stream channel modifications in the existing channels north and south of the Page Pond Impoundment. Outlet control weirs shall be constructed to maintain consistent water levels in the East and West Page Swamps to the degree practicable.

2.1.2.1.2 Final configuration of any channel modifications shall take into account habitat considerations. The design shall be subject to EPA approval.

2.2 Rights-of-Way (ROW) Element of Work

The Rights-of-Way Element of Work is described in the Final ROW RDR. Only ROW within Area I boundaries as delineated by the Allocation Map are addressed by this Element of Work.

2.2.1 The objectives of the Work are to control direct contact risk and migration of contaminants originating from ROW through air and water.

2.2.1.1 Performance Standards for this Element of Work are as follows:

2.2.1.1.1 Rights-of-Way include state, county, local and private roads.

2.2.1.1.2 All ROW with lead concentrations of 1,000 ppm or greater in the top six or twelve inches of soil shall receive, upon EPA approval, one or more of the following treatments: revegetation, barrier placement, removal/replacement and/or access control, dependent upon geographic location and current land use. Barrier type and thickness will also be determined based on geographic location and current land use.

- 2.2.1.1.3 ROW adjacent to residential properties will be sampled at the 0- to 1-, 1- to 6-, 6- to 12-, and 12- to 18-inch intervals. ROW located within Area I, as described by the Site Allocation Map, but not adjacent to residential properties will be sampled at the 0- to 1-, 1- to 6-, and 6- to 12-inch intervals. Sample collection and analysis will be conducted consistent with Appendix B of the Draft Residential Yards RDR.
- 2.2.1.1.4 ROW where access is restricted and where vegetative cover is 85% or greater require no additional remedial action. If access is restricted and vegetative cover is less than 85%, direct revegetation will occur.
- 2.2.1.1.5 Where barriers are utilized, the barriers shall have sufficient durability to minimize future operation and maintenance requirements.
- 2.2.1.1.6 Within residential areas, ROW adjacent to residential properties shall be treated utilizing methods presented in the Draft Residential Yards RDR. These methods will result in a minimum 12-inch protective barrier over soils with lead concentrations of 1,000 ppm or more.
- 2.2.1.1.7 ROW in non-residential settings shall be remediated in a manner consistent with the adjacent properties and usage. These properties, if not access-restricted, shall receive a minimum of a 6-inch protective barrier.
- 2.2.1.1.8 Excavated soils shall be consolidated in the Page Pond Repository or other EPA-approved area.
- 2.2.1.1.9 The exact nature of each ROW remediation shall be determined on a case-by-case basis through the process outlined in the Draft ROW RDR.

2.3 Commercial Properties Element of Work

The Commercial Properties Element of Work is described in the Final Commercial Properties RDR. Only commercial properties within Area I boundaries as delineated by the Allocation Map are addressed by this Element of Work.

2.3.1 The objectives of the Work are to control direct contact risk and the migration of contaminants originating from commercial properties.

2.3.1.1 Performance Standards for this Element of Work are as follows:

2.3.1.1.1 For commercial properties located within Area I, as defined by the Site Allocation Map, surface soils with a lead concentration of 1,000 ppm or greater in the top six or twelve inches must receive a protective barrier. Sampling depth and resultant barrier thickness will be dependent on type of land use. Barriers shall consist of a minimum of six inches of clean soils and revegetation, six inches of gravel, or a paved surface consistent with land use.

2.3.1.1.2 Barriers installed for commercial properties used predominantly by sensitive populations, or commercial properties with unrestricted access from adjacent residential property, shall meet the requirements of the Draft Residential Yards RDR, or be consistent with the setting and acceptable to EPA.

2.3.1.1.3 Commercial properties with lead concentrations of 1,000 ppm or greater in the 12- to 18-inch interval used predominantly by sensitive populations or with unrestricted access from adjacent residential properties and with a high probability of disturbance shall receive a visual marker prior to placement of the 12-inch barrier.

2.3.1.1.4 Commercial properties not predominantly used by sensitive populations or those with restricted access from adjacent residential properties will be sampled at the 0- to 1-, 1- to 6-, and 6- to 12-inch intervals for determination of the lead concentration. All other commercial properties within Area I shall be sampled consistent with the Final Residential Yards RDR. Sample collection and analysis will be conducted consistent with Appendix B of the Draft Residential Yards RDR.

2.3.1.1.5 Excavated soils shall be consolidated within the Page Pond Repository or other EPA-approved areas.

2.3.1.1.6 Remediation of the Kellogg High School practice field, identified separately on the Allocation Map, shall include soil and sod removal and replacement for concentrations exceeding 1,000 ppm lead, up to a maximum removal depth of 6 inches. Removal depths will be based upon the results of the sampling program defined specifically for the practice fields in the Draft Commercial Properties RDR.

2.3.1.1.7 The exact nature of each commercial property remediation shall be determined on a case-by-case basis through the process outlined in the Draft Commercial Properties RDR.

2.4 Water Well Closure Element of Work

The Water Well Closure Element of Work is described in the Final Water Well Closure RDR. Only Water Well Closure within Area I boundaries as delineated by the Allocation Map is addressed in this Element of Work.

2.4.1 The objective of the Work is to assure adequate supplies of water and to minimize exposure to on-site surface and ground waters by reducing the potential for human ingestion and/or contact with contaminated ground water; reducing the potential for ground-water contamination from surface sources; and reducing the number of potential vertical conduits for contaminant migration in ground water.

2.4.1.1 Performance Standards for this Element of Work are as follows:

2.4.1.1.1 All ground-water wells within Area I that are in the main valley aquifer, either upper zone, lower zone, or other contaminated wells (exceeding federally promulgated drinking water standards for total arsenic, cadmium, lead, and zinc) within Area I shall be closed or abandoned according to the Final Water Well Closure RDR and State of Idaho requirements (Idaho Department of Water Resources, 1989).

2.4.1.1.2 Residences in Area I serviced by a well selected for closure, which are not already serviced by a municipal water system, will be attached to the system.

2.5 Institutional Controls Program (ICP)

The Settling Defendants' obligations are described in Attachment D of the Consent Decree.

2.6 Residential Yards Element of Work

The Residential Yards Element of Work is defined in the Final Residential Yards RDR.

2.6.1 The objective of the Work is to control direct contact risk by creating average soil lead concentrations in each Reasonably Segregable Area that are protective of public health, and to control contaminant migration through air and water.

2.6.1.1 Performance Standards for this Element of Work are as follows:

2.6.1.1.1 All residential properties shall be sampled at the 0- to 1-, 1- to 6-, 6- to 12- and 12- to 18-inch intervals for determination of the 1,000 ppm lead threshold concentration. Sampling and analysis shall be conducted according to Appendix B of the Final Residential Yards RDR.

2.6.1.1.2 Soil samples were collected from a geographic distribution of residential properties in the Bauman Subdivision (as delineated on the Allocation Map). Analysis results from the properties sampled were below the 1,000 ppm action level. Therefore, yards in Bauman Subdivision will not require sampling or remediation.

2.6.1.1.3 Based on the results of the yard soil sampling, for those residential yards that exceed the 1,000 ppm lead action level, the extent of remediation will be determined as follows:

Extent of Remediation (2.6.1.1.3)

If Interval Equals or Exceeds Action Level		If Interval Less than Action Level		Remediation Depth
0 - 1"	AND	1 - 6", 6 - 12"	THEN	6"
1 - 6"		0 - 1", 6 - 12"		6"
6 - 12"		0 - 1", 1 - 6"		12"
12 - 18"		0 - 1", 1 - 6", 6 - 12"		NO REMEDIATION
0 - 1", 1 - 6"		6 - 12"		6"
0 - 1", 6 - 12"		1 - 6"		12"
1 - 6", 6 - 12"		0 - 1"		12"
NONE		0 - 1", 1 - 6", 6 - 12"		NO REMEDIATION

- 2.6.1.1.4 All produce garden areas in remediated yards will receive 24 inches of clean soil. A maximum of 11 cubic yards of clean soil for produce gardens will be delivered to residents whose yards do not require remediation. The soil will be made available on a Reasonably Segregable Area basis during the period from initiation of construction activities within that Reasonably Segregable Area through certification. Procedures for residents requesting clean soil are presented in the Final Residential Yards RDR.
- 2.6.1.1.5 The exact nature of each yard remediation shall be determined on a case-by-case basis through the process outlined in the Final Residential Yards RDR.
- 2.6.1.1.6 In all 12-inch removals, if the 12- to 18-inch sample exceeds 1,000 ppm lead, a visible marker, such as an erosion control fabric, shall be placed prior to backfilling with clean soil.
- 2.6.1.1.7 After replacement with clean fill, yards shall be revegetated with sod. Improved contiguous hillside areas not currently serving as lawns shall be revegetated with native grasses.

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- 2.6.1.1.8 Removed Contaminated Soils shall be disposed of at the Page Pond Repository or other EPA-approved area.
- 2.6.1.1.9 Remediated areas where EPA determines that revegetation is not necessary may receive clean gravel instead of soil.
- 2.6.1.1.10 Remediation of residential areas shall occur as scheduled on an annual basis. Upon completion of a Reasonably Segregable Area the average residential soil lead concentration shall be calculated following the procedure described in the Final Residential Yards RDR. If the average is 350 ppm lead, or greater, additional yards shall be remediated until the mean for the Reasonably Segregable Area is calculated to be below the 350 ppm criterion.

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3.0 DESCRIPTION OF PLANS AND REPORTS

The following list, which identifies plans and reports which may be submitted during the RD/RA for the Work, reflects the current status of the project and unique aspects of the Bunker Hill Site. Considerable progress has already been made on the RD process. A series of Draft or Final Remedial Design Reports (RDRs), which address in detail the remediation requirements set forth in this Statement of Work are attached to the Consent Decree. Because of the diverse nature of the RDRs, each document individually addresses many of the Components and information requirements set forth in RD/RA guidance. In addition, specific planning and reporting requirements have been developed which correspond to the RDRs and further information to be generated in the RD/RA Process.

This Section is intended to provide a framework for developing plans and reports for the Work, and is not intended to be a prescriptive explanation of their content. Other information and requirements may be prescribed by EPA or the State through the review of the deliverables and other documents prepared by the Settling Defendants under this Consent Decree. Unless otherwise specified, the description is not meant to distinguish between draft and final versions of the documents.

3.1 Listing of Plans and Reports

The following is a list of the plans and reports described in this Section. Upon EPA's request any of these may be submitted in electronic form. This Section then sets forth a description of the types of information that should be included in the listed plans and reports.

- General Project Management
 - Project Management Monthly Reports
 - Technical Memoranda
- Remedial Design
 - Draft Remedial Design Reports
 - Final Remedial Design Reports
- Remedial Action
 - Remedial Action Work Plans
 - Health and Safety Plan
 - Construction Completion Reports
 - Completion of Remedial Action Certification Reports
 - Completion of the Work Reports

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- Page Pond Post-Closure Operations and Maintenance (O&M) Plan
- Page Pond Annual Monitoring Report

3.2 General Project Management

3.2.1 Project Management Monthly Reports

The Project Management Monthly Reports shall be a consolidated status report on all Work. The Reports shall be divided into separate sections providing the status of the individual Elements and Components of Work under this SOW. The Reports shall include, but are not limited to, the following basic information:

- Introduction, including the purpose and general description of the Work currently being conducted.
- Activities/tasks undertaken during the reporting period, and expected to be undertaken during the next reporting period.
- Deliverables and milestones completed during the reporting period, and expected to be completed during the next reporting period.
- Identification of issues and actions that have been or are being taken to resolve the issues.
- Status of the overall project schedules and any proposed schedule changes.

3.2.2 Technical Memoranda

The Technical Memoranda are the mechanism for requesting modification of plans, designs, and schedules. Technical memoranda are not required for non-material field changes that have been approved by EPA. In the event that Settling Defendants determine that modification of an approved plan, design, or schedule is necessary, Settling Defendants shall submit a written request for the modification to the EPA Project Coordinator which includes, but is not limited to, the following information:

- General description of and purpose for the modification.
- Justification, including any calculations, for the modification.
- Actions to be taken to implement the modification, including any actions related to subsidiary documents, milestone events, or activities affected by the modification.
- Recommendations.

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3.3 Remedial Design

3.3.1 Draft Remedial Design Reports

Draft Remedial Design Reports (Draft RDRs) have been prepared for each Element of Work to further define the scope of the Remedial Actions required by the Records of Decision (RODs) for the Bunker Hill Superfund Site issued in August of 1991, and September of 1992. The Draft RDRs have been finalized for the Residential Yards, ROW, Water Well Closure, and Commercial Properties Elements of Work. The Draft Page Pond RDR provides the approved conceptual design for the Page Pond Element of Work and presents the objectives and Performance Standards to be applied and design considerations suggested by recent field investigations. The Final Page Pond RDR will be based upon the approved conceptual designs presented in the Draft RDR.

3.3.2 Final Remedial Design Reports

The Final Page Pond RDR shall be a continuation and expansion of the FS, associated technical memoranda, and Draft RDR. The Final RDR represents the 100% design final plans and specifications, and shall include the basic information described for the Draft RDR in addition to incorporating any changes necessary that arise from EPA's comments and modifications. The Final Page Pond RDR shall include the following:

- Design drawings.
- Design specifications.
- Design calculations.
- Design quality assurance considerations.
- General design concept and criteria of facilities to be constructed.
- Description of existing facilities and identification of any that will be altered, destroyed, or abandoned during construction.
- Description of off-site facilities required or affected.
- Analysis/discussion of Performance Standards and how they have been incorporated into the design.
- Design parameters dictated by the Performance Standards.

3.4 Remedial Action

3.4.1 Remedial Action Work Plans

The Remedial Action Work Plans shall provide for the construction of the remedy, in accordance with the SOW, as set forth in the

design plans and specifications in any approved final design submittals required by the RDRs. The Remedial Action Work Plans shall be the primary plans to control and guide the construction of the Elements or Components of Work performed by the Settling Defendants under this Consent Decree.

- A Residential Areas Annual Remedial Action Work Plan addressing all Residential Areas Elements of Work shall be submitted annually as described in Section V of the SOW. Such work plans shall address the proposed remediation activities for Residential Yards, Water Well Closure, ROW, and Commercial Properties Elements of Work, to be completed within the boundaries of Area I during a construction season. An annual work plan may address all or a portion of one or more Reasonably Segregable Areas. A Page Pond Remedial Action Work Plan addressing the Page Pond Element of Work shall be submitted as described in Section V of the SOW. The Remedial Action Work Plans shall include, but are not limited to, the following:
 - An overall description of the work to be performed with cross-references to other documents, if any, containing more specific details.
 - The technical approach for undertaking, monitoring, and completing the Element or Component of Work. The discussion should include a description of the procedures, specific activities and objectives of such activities, and facilities to be installed; the Performance Standards; identification of and plans for obtaining any necessary off-site access, permits, or approvals; and identification of and plans for any materials requiring disposal.
 - A description of the deliverables and milestones.
 - A construction schedule.
 - Sampling and analysis requirements, including field verification programs.
 - Sampling rationale and data quality objectives.
 - Sampling locations and frequency.
 - Sampling equipment and sampling, preservation, preparation and cleaning procedures.
 - Sampling chain of custody procedures.
 - Analytical methods and procedures.
 - Construction O&M requirements.

- Plan for integrating, coordinating, and communicating with EPA, IDHW, and other government officials.
- Quality assurance measures including:
 - Audits.
 - Routine procedures, including internal quality control checks.
 - Corrective action procedures.
 - Construction-related QA/QC.
- Additional health and safety measures.
- QA/QC measures shall be in accordance with EPA guidance, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", December 1980, (QAMS-005/80); "Data Quality Objective Guidance", (EPA/540/G87/003 and 004); and appropriate EPA Region 10 guidance.

3.4.2 Health and Safety Plan

A Remedial Action Health and Safety Plan shall establish health, safety, and emergency response procedures for field activities associated with the construction of each Element or Component of Work to be performed by the Settling Defendants. The Plan shall conform to applicable or appropriate Occupational Safety and Health Administration (OSHA) regulations, requirements, and guidance. This Health and Safety Plan shall comprehensively address all construction work in Area I of the Site. Specific Health and Safety issues pertinent to a single Element of Work shall be further addressed in that Remedial Action Work Plan. In that manner the comprehensive Health and Safety Plan shall be supplemented by the Residential Areas Annual Remedial Action Work Plans and the Page Pond Remedial Action Work Plan. The Plan, in conjunction with the above-referenced Remedial Action Work Plan, shall include, but is not limited to, the following basic information:

- Overall description of the Plan, including purpose and a general description of the Elements or Components of Work covered by the Plan.
- Emergency and post-emergency procedures, including the designation of the Settling Defendants' emergency response coordinator.
- Standard job site health and safety considerations and procedures, including hazards evaluation and chemicals of concern.

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- Communication and notification procedures within the Settling Defendants' organization, and with EPA, State, other government officials, and community members.
- Personal Protection Equipment and instructions/procedures to ensure personnel protection and safety.
- Monitoring plans.
- Medical surveillance programs and training.
- Recordkeeping and reporting procedures.

3.4.3 Construction Completion Reports

The Construction Completion Reports certify the completion of construction of a particular Element or Component of Work. In the case of residential areas, a Construction Completion Report will be prepared annually. These reports will provide evaluations of completion of Work relative to the scope outlined in a Residential Areas Annual Remedial Action Work Plan. The Reports shall include, but are not limited to, the following:

- Overall description of the Report, including purpose and a general description of the Element(s) or Component(s) of Work covered by the Report.
- Overall description of the constructed Element(s) Component(s) of Work and all associated facilities, appurtenances, and piping.
- Well Closure Records signed by the Settling Defendants' project coordinator or designated representative and records indicating that the work was performed by a well driller licensed in the State of Idaho.
- As-built plans or plot plans and specifications including:
 - Construction QA/QC records.
 - Summary of any modifications implemented by Technical Memoranda.
- An Idaho-registered Professional Engineer must sign and stamp as-built plans for the Page Pond Element of Work. As-built plans (plot plans) for the Remedial Actions in residential areas must be signed by the Settling Defendants' Project Coordinator, following the procedure outlined in Appendix E of the Final Residential Yards RDR.

3.4.4 Completion of Remedial Action Certification Reports

The Completion of Remedial Action Certification Reports shall be submitted upon completion of all Elements of Work within a Reasonably Segregable Area and achievement of Performance

Standards. These reports shall serve as the Settling Defendants' documentation supporting completion of the remedial actions and achievement of the Performance Standards within a Reasonably Segregable Area and to request certification from EPA for approval, with a copy to the State, pursuant to Section XV of the Consent Decree. The Reports shall include, but are not limited to, the following information:

- Overall description of the Report, including purpose and a general description of the Reasonably Segregable Area including the Elements or Components of Work covered by the Report. The general description of the Reasonably Segregable Area shall include a description of the Work that was undertaken, objectives, period of operation, and Performance Standards.
- Findings and results of the pre-certification inspection, including documentation supporting that the Performance Standards, as appropriate, have been met.
- Contingency plans in the event Performance Standards are not achieved.
- Cross-references to the Construction Completion Report(s), which presents as-built drawings, corresponding to the Elements or Components of Work addressed by the Completion of Remedial Action Certification Report.
- Demonstration that all obligations for a Reasonably Segregable Area under this SOW and Consent Decree have been satisfactorily completed or achieved by the Settling Defendants in accordance with the Consent Decree.
- A statement by the Settling Defendants' Project Coordinator that Remedial Action has been completed in full satisfaction of the requirements of the Consent Decree.
- For residential areas, the following statement by an Idaho-registered Professional Engineer:

It is hereby certified that the thickness of the soil barrier layers constructed and the existence of a visual barrier in the designated residential yards, commercial properties, and rights-of-way within a Reasonably Segregable Area of the Site known as _____, represented by the inspection reports and sampling data included in the 'Residential Area Remediation Assessment and Certification' forms for the respective properties, is in full satisfaction of the Performance Standards for barrier thickness and placement of a visual barrier, as presented in the Bunker Hill Superfund Site

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Area I SOW and the Final Residential Yards,
Commercial Properties and Rights-of-Way RDRs.

- For residential areas, the following statement by an Idaho-registered Professional Engineer, or an Idaho-registered Professional Geologist:

It is hereby certified that well closures, conducted within a Reasonably Segregable Area of the site known as _____, represented by the Well Closure Records and supporting information presented in the Construction Completion Reports, are in full satisfaction of the Performance Standards for well closure presented in the Bunker Hill Superfund Site Area I SOW and the Final Water Well Closure RDR.

- For Page Pond, a statement by an Idaho-registered Professional Engineer that the Remedial Action at Page Pond is in full satisfaction of the requirements of the Consent Decree.

3.4.5 Completion of the Work Report

This report shall be submitted after all phases of the Work (including any O&M obligations required by the Consent Decree) have been completed in full satisfaction of the requirements of this Consent Decree. Requirements of this report are set forth in Paragraph 52 of the Consent Decree. The Report shall comprehensively present the certifications by the Professional Engineer and Project Coordinator previously required for each Reasonably Segregable Area in the individual Completion of Remedial Action Certification Reports. Subsequent actions of the Settling Defendants, such as O&M requirements at Page Pond, and the current status of the various Reasonably Segregable Areas will be evaluated. If, after review, the Settling Defendants believe that the Work has been completed in full satisfaction of the Consent Decree, the report shall be submitted containing the following statement, signed by a responsible corporate official of the Settling Defendants or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

3.4.6 Page Pond Post-Closure Operation and Maintenance (O&M) Plan

A plan addressing long-term operation and maintenance requirements for all aspects of Page Pond shall be prepared. This document shall reflect the specific post-remediation activities required to maintain remedy effectiveness at Page Pond and shall include, but not be limited to:

- Operational procedures.
- Operational emergency response.
- Maintenance procedures and schedules.
- Monitoring procedures and schedules.
- Parts and equipment inventory.
- Compliance plan that describes the procedures to be used to guide the compliance testing activities and acceptance procedures for demonstrating compliance with the objectives and Performance Standards associated with the particular Element or Component of Work.
- Biomonitoring (long term).

3.4.7 Page Pond Annual Monitoring Report

A report presenting the results of ongoing monitoring activities at Page Pond will be prepared annually, as specified in the Draft Page Pond RDR. The annual reports shall include, but are not limited to the following:

- Results of sediment and water quality monitoring conducted as specified in the Draft Page Pond RDR.
- Results of biomonitoring conducted as specified in the Draft Page Pond RDR.
- A brief evaluation of the current year's data relative to historical data and biomonitoring data from similar areas in the region.

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4.0 DELIVERABLES

This section presents listings of deliverables associated with the Work. Two sets of deliverables will be developed for Work conducted after completion of the remedial design; one set will apply to remedial action at Page Pond, and the other set will apply to remedial action for Residential Areas. Residential Areas shall consist of the following Elements of Work occurring within Area I boundaries as delineated by the Allocation Map: Rights-of-Way, Commercial Properties, Residential Yards, and Water Well Closure.

4.1 Remedial Design

The following separate deliverables, for the corresponding Elements of Work, apply to Work conducted through completion of the remedial design:

- Draft Residential Yards RDR
 - Final Remedial Design Report (Attachment E to Consent Decree)
- Draft Page Pond RDR
 - Draft Remedial Design Report (Attachment F to Consent Decree)
 - Final Remedial Design Report
- Draft Rights-of-Way RDR
 - Final Remedial Design Report (Attachment G to Consent Decree)
- Draft Commercial Properties RDR
 - Final Remedial Design Report (Attachment H to Consent Decree)
- Draft Water Well Closure RDR
 - Final Remedial Design Report (Attachment I to Consent Decree)

4.2 Remedial Action

4.2.1 Page Pond

For the Page Pond Element of Work, the following deliverables will be required after completion of the remedial design phase:

- Draft Remedial Action Work Plan
- Final Remedial Action Work Plan
- Monthly Progress Reports
- Construction Completion Report
- Completion of Remedial Action Certification Report
- Post Closure O&M Plan
- Page Pond Annual Monitoring Report

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4.2.2 Residential Areas

For the Residential Areas, a Residential Areas Annual Remedial Action Work Plan will be submitted. This Work Plan shall address the Residential Yards, Rights-of-Way, Commercial Properties, and Water Well Closures for a given geographic area. The Work Plan and other subsequent deliverables are listed below.

- Draft Residential Areas Annual Remedial Action Work Plan
- Final Residential Areas Annual Remedial Action Work Plan
- Monthly Progress Reports
- Construction Completion Reports (annually including Plot Plans)
- Completion of Remedial Action Certification Report (per Reasonably Segregable Area)

4.3 Health and Safety Plan

In addition to the above reports a comprehensive Health and Safety Plan is also recognized as a deliverable for Area I Elements of Work. Details regarding sampling and analysis will be included as part of the Remedial Action Work Plans.

4.4 Completion of Work Report

A Completion of Work Report will also ultimately be prepared.

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5.0 OVERALL PROJECT SCHEDULE

The Overall Project Schedule provides:

- a master schedule for all significant milestone events and activities; and
- a list of all deliverables for all Elements or Components of Work specified below and a master schedule for the production of these deliverables.

Individual schedules for completion of remedial actions for Residential Areas and Page Pond are provided.

5.1 Residential Areas

The approach for remediation of residential areas is the completion of all Residential Yards, ROW, Commercial Properties, and Water Well Closures within a given Reasonably Segregable Area. The controlling factor for the timing of the certification of a Reasonably Segregable Area is the number of Residential Yards requiring remediation. This number includes all yards sampled which equal or exceed the 1,000 ppm lead threshold and any additional yards requiring remediation in order to attain the 350 ppm average for yards in each Reasonably Segregable Area. At this time, the sampling required to determine the total number of yards requiring remediation has not been conducted. For this reason, a precise comprehensive schedule for completion of residential areas cannot be developed. Instead, the rate of remediation and duration of completion of Work will be based upon the process described below.

During the first and second construction seasons, a minimum of 130 (first season) and 200 yards (second season), will be remediated. Following the conclusion of the second construction season, representatives from EPA, the State, and the Settling Defendants will meet to reassess the minimum number of yards to be remediated during each remaining construction season. If no consensus is reached, the minimum will remain at 200. This reassessment will take into account the impact of the remediation on the communities.

Prior to each upcoming construction season, EPA, in consultation with the State, may, until April 1 of each year, add the yards of homes meeting the "high risk" criteria (as outlined in Section 1.2.2 of this SOW) to the list of yards to be remediated provided in the Residential Areas Annual Remedial Action Work Plan. EPA, in consultation with the State, may then add an additional 30 yards until September 15th. To help facilitate efficient scheduling of remediation activities, the Settling Defendants will be notified as soon as a high risk yard has been identified. EPA and the State will make best efforts to identify all high risk yards prior to September 1st. Yards added as part of the "high risk" program shall count toward the attainment of the annual minimum number criteria specified above.

A Draft Residential Areas Annual Remedial Action Work Plan shall be produced for EPA review/approval on or before April 15 of each year. Comments on the Draft Work Plan will be provided by May 15 of each year.

to allow revision of the Draft Work Plan prior to June 15 of each year. Each year's Work shall be initiated by June 15, if weather conditions allow, and shall be completed by December 31 or earlier. The attached Remedial Action General Activity Schedule reflects the planned sequence and general rate of remediation based upon the defined Reasonably Segregable Areas and assumptions as to the number of yards requiring remediation within a Reasonably Segregable Area. The actual total number of yards remediated shall be dependent upon sampling results, the annual number of high risk yards, and permission to access yards.

Given this approach, the controlling deliverable for this aspect of the Work will be the Draft Residential Areas Annual Remedial Action Work Plan. This document will serve as the controlling activity for the critical path analysis for Work in the Residential Areas. The attached Residential Areas - Remedial Action Sequence and General Schedule provides a basis for scheduling of subsequent activities and reports. The anticipated overall schedule for Area I remediation is provided in the Remedial Actions General Activity Schedule (attached).

5.2 Page Pond

The attached Page Pond - Remedial Action Sequence and General Schedule provides a basis for scheduling and subsequent deliverables/milestones. The controlling activities are the finalization of the Final Page Pond RDR and the Page Pond Remedial Action Work Plan. A Draft Final Page Pond RDR will be submitted by September 1, 1994. A Draft Page Pond Remedial Action Work Plan will be produced by March 1, 1995. A construction schedule will be provided in the EPA-approved Final Page Pond RDR. A Construction Completion Report will be provided within 60 days of completion of the Page Pond remedial activities, and a Pre-Certification Inspection will be conducted within 90 days of concluding that the applicable Performance Standards have been attained. The Completion of Remedial Action Certification Report for Page Pond will be submitted within 30 days of the Pre-Certification Inspection.

5.3 Initial Planning Efforts

The Settling Defendants will begin work on preparation of the following deliverables at the time of lodging of the Consent Decree, in accordance with the schedule set forth in this SOW:

- Monthly Progress Reports
- Technical Memoranda (as needed)
- Final Page Pond Remedial Design Report
- Residential Areas Annual Remedial Action Work Plan
- Page Pond Remedial Action Work Plan
- Health and Safety Plan (as needed).

Work shall proceed on these deliverables in order to prepare for future sampling and construction activities in accordance with the attached

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schedule. However, sampling and construction activities will only commence after the Consent Decree has been entered by the Court, unless such construction or sampling is otherwise ordered by the Court.

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Residential Areas - Remedial Action Sequence and General Schedule

TASK	DEADLINE
• Monthly Progress Reports (comprehensive reports for all Area I Work)	tenth day of each month following the reporting period.
• Draft Residential Areas Annual Remedial Action Work Plan	April 15
• EPA and State comments on the Draft Residential Areas Annual Remediation Action Work Plan	May 15
• Final Residential Areas Annual Remedial Action Work Plan	June 15
• Initiation of Remedial Action	June 15
• Completion of Construction Season	December 31 or earlier
• Construction Completion Report (annually)	60 days after completion of Construction Season
• Pre-Certification Inspection for completion of Remedial Action Certification Report	within 90 days of concluding that Performance Standards have been attained for a Reasonably Segregable Area
• Completion of a Remedial Action Certification Report (after concluding that work has been completed for a Reasonably Segregable Area)	within 30 days of the Pre-Certification Inspection
• Pre-Certification Inspection for Completion of Work Report.	within 90 days of concluding that all work has been completed for Area I
• Completion of Work Report	within 30 days of Pre-Certification Inspection (both the Residential Areas and Page Pond will be addressed in a single report)

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Page Pond - Remedial Action Sequence and General Schedule

TASK	DEADLINE
● Monthly Progress Reports (comprehensive reports for all Area I Work)	tenth day of each month following the reporting period
● Draft Final Page Pond RDR	September 1, 1994
● Draft Page Pond Remedial Action Work Plan	March 1, 1995
● Construction Completion Report	60 days after completion of Construction
● Pre-Certification Inspection for Completion of Remedial Action Certification Report	within 90 days of concluding that Performance Standards have been attained for the Page Pond Element of Work
● Completion of Remedial Action Certification Report	within 30 days of Pre-Certification Inspection
● Page Pond Annual Monitoring Program	90 days after conclusion of the sampling season
● Pre-Certification Inspection for Completion of Work Report	within 90 days of concluding that all Work has been completed for Area I
● Completion of Work Report	within 30 days of Pre-Certification Inspection (both the Residential Areas and Page Pond will be addressed in a single report)

Area 1

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ATTACHMENT C

BUNKER HILL SUPERFUND SITE ALLOCATION MAP

DECEMBER 10, 1993

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ATTACHMENT D TO THE CONSENT DECREE
INSTITUTIONAL CONTROLS PROGRAM DOCUMENT

1. **Introduction.** The purpose of this document is to list and describe the responsibilities of the Settling Defendants with respect to the implementation of the Institutional Controls Program (ICP) for Area I¹ of the Site. The ICP for the Site is generally described in the following documents: ICP Regulatory Component Document (Murray Lamont & Associates, Inc., 1993) ("ICP Regulatory Document"); An Evaluation of Institutional Controls for the Populated Areas of the Bunker Hill Superfund Site (Draft) (Panhandle Health District, 1991); the Panhandle Health District Environmental Health Code; and supporting amendments to the following documents as proposed or as ultimately adopted for the Site: the Model Subdivision Ordinance, storm water regulations, and changes to existing comprehensive plans and land use regulations. These documents clarify and refine the requirements for the ICP outlined in the Records of Decision for the Site. Although the ICP applies to the entire Site, the sole obligation of the Settling Defendants is to fund and/or implement the following eight program elements as they apply to Area I, as described below. With respect to these program elements, the Panhandle Health

¹ "Area I" means that area for which Settling Defendants have responsibility under the Consent Decree, as delineated on the Bunker Hill Superfund Site Allocation Map, Attachment C to the Consent Decree.

District (PHD) will serve as the clearinghouse for citizen requests for ICP information or services.

2. **Program Elements.** The ICP elements to be funded and/or implemented by the Settling Defendants consist of the following eight programs as they relate to Area I. Each of these elements as they relate to Area I shall be annually funded and/or implemented by the Settling Defendants until certification of all Remedial Actions. Upon certification of all Remedial Actions, each of these program elements as they relate to Area I shall be permanently funded by the Settling Defendants in accordance with the terms of section 3(d)(ii) herein.

a. **Administration.** The Settling Defendants shall fund in accordance with section 3 the administrative oversight and monitoring of the ICP, including permits and inspection programs, budgeting, sampling, enforcement, public relations, coordination with local governments, coordination of material supply programs and delivery and disposal systems, and other administrative duties required for implementation of the ICP in Area I. The Settling Defendants shall fund the reasonable costs, including attorneys' fees, of any nuisance or other actions brought by PHD to abate lead

related releases from the two following properties located outside of Area I: 1) the R.J. Partnership property, tax parcel number D-0000-006-3400; and 2) the K.I. Corporation property, tax parcel number D-0000-006-2600.

- b. **Education.** The Settling Defendants shall fund in accordance with section 3 an education program consisting of four main elements: pamphlets, brochures, multi-media information, and information enclosed with property tax and utility billings or other available delivery mechanisms.
- c. **Health Intervention.** Settling Defendants shall fund in accordance with section 3 the following elements of the Health Intervention Program: counseling, elementary education, and physician education. Blood lead screening is an important component of the Health Intervention Program; however, it will not be part of the Settling Defendants' obligations under this Consent Decree.
- d. **Interior Material Supply Program.** This program will assist homeowners and residential tenants in the establishment of barriers within the home. Until the certification of all Remedial Actions, the Settling Defendants will provide HEPA vacuums, coveralls, and respirators for distribution by PHD,

and plastic sheeting and gravel for interior remodeling projects carried out in Area I in accordance with the ICP Regulatory Document upon receiving a request by the PHD. After the certification of all Remedial Actions, PHD will assume full responsibility for implementation of the program using funding provided by the Settling Defendants in accordance with section 3.

- e. **Exterior Material Supply Program.** Until certification of all Remedial Actions, Settling Defendants will provide and deliver clean top soil and crushed rock, as defined by the Residential Soils RDR, for exterior residential projects in Area I requiring no more than one cubic yard of material which are carried out in accordance with the ICP Regulatory Document. After the certification of all Remedial Actions, PHD will assume full responsibility for implementation of the program using funding provided by the Settling Defendants program in accordance with section 3. At the start of the 1994 construction season, the Settling Defendants will also make 2500 cubic yards of clean soil available to the PHD for use in implementing the ICP.

- f. **Collection Program.** Until the certification of all Remedial Actions, at the request of citizens forwarded by the PHD, the Settling Defendants will collect, store and transport up to one cubic yard of soil, tailings and/or gravel from small residential projects within Area I to a repository. After the certification of all Remedial Actions, the Settling Defendants will either continue to provide collection services or provide funding to the PHD to continue the program in accordance with section 3.
- g. **Monitoring and Repair.** The Settling Defendants will monitor and repair remediated areas as provided in the Residential Yards, Commercial Properties, and Rights-of-Way RDRs. Following the certification of completion of a Remedial Action, as defined in the SOW, the Settling Defendants shall, in accordance with section 3, fund and the PHD shall perform repairs of remediated areas in such certified areas in accordance with the ICP Regulatory Document and the Environmental Health Code.
- h. **Project Disposal and Repository.** The Settling Defendants will make a soils repository available for all projects within Area I requiring the

disposal of contaminated material which are carried out in accordance with the ICP Regulatory Document. Until certification of all Remedial Actions, the Settling Defendants will maintain and operate a repository. After certification of all Remedial Actions, the Settling Defendants will continue to provide a repository for such projects in Area I to be operated by the PHD using permanent funding as described in section 3(d)(iii).

3. Program Funding.

a. Oversight Committee.

i. Duties. An Oversight Committee shall be established to monitor ICP expenditures by PHD, to approve annual budgets, and to establish permanent funding as provided in section 3(d)(iii). The Oversight Committee shall not have the authority to expand the scope of the duties of the Settling Defendants under this Consent Decree, but shall have the authority to redirect resources provided by the Settling Defendants to accomplish the purposes of the ICP. The Oversight Committee shall also have authority to review the ICP in its entirety and make recommendations regarding funding

or program elements not to be provided by the Settling Defendants.

ii. **Members.** The Oversight Committee shall consist of three persons: one representative each from EPA, the Settling Defendants, and the State of Idaho. The Oversight Committee shall meet at a minimum once per quarter at the Site to carry out its duties. Disputes regarding the annual or permanent financing of the ICP related to Area I shall be resolved under the Dispute Resolution provisions of Section XX of the Consent Decree or the Memorandum of Agreement between the State of Idaho and EPA, Attachment K to the Consent Decree, as appropriate. Disputes regarding the financing of funding or activities other than those to be provided by the Settling Defendants shall be resolved according to the terms and conditions applicable to such other funding or activity.

- b. **Annual Budgets.** Each year no later than March 1, the PHD will prepare an annual budget covering the entire ICP for the following year and submit it to the Oversight Committee. The annual budget submittal will indicate, in accordance with this Attachment D, those Area I elements proposed to be funded and the level of funding by the Settling

Defendants. The first year budget shall be as provided in section (3)(d)(i). Beginning in the second year, the Oversight Committee will evaluate the proposed budget each year based on the scope of the ICP and the following factors: number of inspections to be performed; average time required for inspections; permits anticipated and work load by permit type; number of people served by the health intervention program; contacts planned in connection with the supply and collection programs; educational programs by type; relative levels of services provided between Area I and other areas of the Site; and other work unit data on which the budget is based. Data from previous years will be reviewed in evaluating the importance of various activity levels in regard to budget needs. In the event of a dispute regarding the proposed annual budget, the previous year's budget will be used until the dispute is resolved.

- c. Reporting by PHD. In order to assist with the budgeting and oversight process, the PHD shall maintain thorough accounting records of its activities in implementing the ICP, including personnel hours by type of activity (program elements), mileage, telephone logs, equipment costs

and other expenses and receipts. This information will include a breakdown of costs incurred in implementing the ICP in Area I, and shall be used to prepare monthly budget status reports comparing actual spending to budgeted amounts. Summaries thereof shall be submitted quarterly to the Oversight Committee by PHD. At the request of, and as funded by, the Settling Defendants, there shall be an annual audit of the program conducted by independent certified public accountants and directed by the Oversight Committee. In any case, accounting information regarding the ICP shall be made available to the Settling Defendants upon reasonable request.

d. PRP Funding.

- i) **Start-up Funding.** The PHD has proposed, and the parties have approved, a first year total start-up budget of \$224,100 plus \$28,000 in capital costs. The Settling Defendants have agreed to reimburse the entity providing the funding within sixty days of the entry of the Consent Decree for any of these budgeted start-up costs incurred and paid after the lodging of the Consent Decree but prior to its entry by the Court.

ii) **Annual Funding.** Until permanent funding is established as set forth below, the Settling Defendants shall pay only those costs actually incurred in implementing the eight ICP program elements in Area I. By July 1 of each year, the Settling Defendants shall pay the estimated budget for the first two quarters of PHD's fiscal year. By the first day of each subsequent quarter, payments shall be made such that the budgeted amounts will be reconciled each quarter thereafter with the amounts actually incurred in the preceding quarters.

iii) **Permanent Funding.** Within sixty days of certification of all Remedial Actions, the Settling Defendants shall provide permanent funding for the program elements of the ICP as they relate to Area I. The total amount of permanent funding to be provided by Settling Defendants shall be calculated, in accordance with this Attachment D, based on actual expenditure and activity level history, the then current scope and program elements of the ICP, and projected activity levels and necessary contingency amounts for the future.

The Settling Defendants' percentage of the total amount of permanent funding shall be calculated using the historical breakdown of costs prepared by the PHD pursuant to Section 3(c) above. The funds provided by the Settling Defendants shall be placed in a trust fund or similar mechanism.

BUNKER HILL SUPERFUND SITE

**FINAL RESIDENTIAL YARDS
REMEDIAL DESIGN REPORT**

ATTACHMENT E

March 1994

Prepared For:

ASARCO INCORPORATED, HECLA MINING COMPANY, SUNSHINE MINING COMPANY

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BUNKER HILL SUPERFUND SITE

**FINAL WATER WELL CLOSURE
REMEDIAL DESIGN REPORT**

ATTACHMENT F

March 1994

Prepared For:

ASARCO INCORPORATED, HECLA MINING COMPANY, SUNSHINE MINING COMPANY

T17273

BUNKER HILL SUPERFUND SITE

**DRAFT PAGE POND
REMEDIAL DESIGN REPORT**

ATTACHMENT G

March 1994

Prepared For:

ASARCO INCORPORATED, HECLA MINING COMPANY, SUNSHINE MINING COMPANY

T17271

BUNKER HILL SUPERFUND SITE

**FINAL RIGHTS-OF-WAY
REMEDIAL DESIGN REPORT**

ATTACHMENT H

March 1994

Prepared For:

ASARCO INCORPORATED, HECLA MINING COMPANY, SUNSHINE MINING COMPANY

T17275

**BUNKER HILL SUPERFUND SITE
FINAL COMMERCIAL PROPERTIES
REMEDIAL DESIGN REPORT**

March 1994

Prepared For:

ASARCO INCORPORATED, HECLA MINING COMPANY, SUNSHINE MINING COMPANY

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Attachment J
to the Bunker Hill Consent Decree

Any three of the four numbered requirements must be satisfied to comply with the financial assurance requirements of Paragraph 49(e) of the Bunker Hill Consent Decree:

1. Either of the following two (2) alternatives:
 - a.
 - i. total liabilities/net worth = 1.5 or less¹;
or
 - ii. net income plus depreciation, depletion, and amortization minus \$ 10 million/total liabilities greater than 0.10.
 - b. A current bond rating for the company's most recent bond issuance of AAA, AA,A, or BBB as issued by Standard and Poor's or Aaa, Aa, or Baa as issued by Moody's.
2. A ratio of current assets to current liabilities = 1.25 or greater.
3. Tangible net worth greater than the sum of the response cost estimate and other obligations covered by a financial test plus \$ 10 million.
4. Assets located in the united States amounting to at least ninety percent (90%) of total assets or at least six (6) times the sum of the current cost estimate of work to be performed and any obligations covered by the financial test.

¹ The liabilities include all of the company's environmental liabilities for which assurance is given using a financial test.

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Memorandum of Agreement
between
United States Environmental Protection Agency
and the
Idaho Department of Health and Welfare
Division of Environmental Quality
for the
Consent Decree for Area I of the
Bunker Hill Superfund Site

Goal

The Idaho Department of Health and Welfare, Division of Environmental Quality ("State") and the United States Environmental Protection Agency ("EPA") seek to coordinate resources to oversee the implementation of Remedial Actions at the Bunker Hill Superfund Site. Coordination of oversight activities and enforcement actions taken in accordance with the Bunker Hill Consent Decree ("CD") with Hecla, ASARCO, Sunshine Coeur d'Alene Mines and Callahan Mining Company will facilitate the successful completion of certain activities specified in the Records of Decision ("RODs") for the Bunker Hill Site.

This Memorandum of Agreement ("MOA") recognizes the following:

1. The benefit of the State's knowledge, expertise, and extensive involvement in the Bunker Hill Site, as well as the availability of on-site field oversight staff located at the Project Office in Kellogg, Idaho. Additionally, the State has contractor support available to further assist in oversight activities.

2. A combination of EPA and State resources will provide the most effective and efficient remediation of the areas outlined in the CD.

Purpose:

This MOA seeks to delineate the general areas of responsibility of the EPA and the State in connection with implementation of remedial actions in the designated areas of the Bunker Hill Site, and to describe the procedures that will be followed in overseeing Work conducted by Settling Defendants at the Site.

Agreements:

This MOA recognizes that the State will play a major role in oversight of remedial actions in the areas of the Site that are encompassed in a Consent Decree with a group of Settling Defendants for the Bunker Hill Site. While the State and EPA will both have responsibilities for document review and oversight of field activities, it is the agencies expectation that the State will have primary day-to-day responsibilities for these activities. Recognizing that EPA has the authority to assess stipulated penalties against the Settling Defendants under the terms of the Consent Decree, EPA will work closely with the State to ensure that the activities of the agencies are well coordinated.

1. State Opportunity for Review and Comment: The Consent Decree provides the State with the opportunity for review and comment in a number of instances. The agencies expect that the State's review and comment will provide the basis for most of the agencies decisions under this Consent Decree and therefore is a significant responsibility which the State accepts and EPA respects. The agencies agree that any disagreements arising from the State's role in reviewing and commenting will be referred to the formal dispute resolution procedure provided by Paragraph 6.

2. Deliverable Review/Comment: Unless otherwise agreed, agency comments regarding Consent Decree deliverables will be developed by the State, with EPA input. EPA will make every effort to transmit comments to the State on each deliverable seven (7) days prior to the date a response is due to Settling Defendants. A standard transmittal form, documenting EPA concurrence with the State's compiled comments will be developed to expedite transmittal of comment letters to Settling Defendants. Formal transmittal of the comments to the Settling Defendants will be performed by EPA or by the State at EPA's request. While EPA retains the responsibility for approving all deliverables required by the Consent Decree, any disagreements regarding approval or disapproval of deliverables will be referred to the formal dispute resolution procedure provided by Paragraph 6.

In general, EPA and the State Project Coordinators or designees will work to develop responses to Settling Defendants' deliverables which reflect the view of both agencies. When the EPA and State Project Coordinators or their designees are unable to resolve disagreements following discussion of the disputed issues with their respective supervisors, the matter will be referred to the formal dispute resolution procedure provided by Paragraph 6.

3. Field Oversight: While both EPA and the State have responsibilities for oversight of field activities, the State is expected to provide primary day-to-day oversight because of the availability of the on-site State staff in the Kellogg Superfund Project Office. EPA and the State agree that their respective Project Coordinators or designees have authority to make field decisions on behalf of their respective agencies. The State shall keep EPA updated on field activities and will notify EPA immediately of any significant changes in these activities. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

In the event that there is a release or threat of release which constitutes an emergency situation under Paragraph 53 of the Consent Decree, EPA and the State shall coordinate any necessary consultations with the Settling Defendants regarding appropriate response actions to prevent, abate or minimize such release. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

Prior to halting work in accordance with Paragraph 46 of the Consent Decree, the State Project Coordinator or designee will, if possible, consult with the EPA Project Coordinator or designee. Immediately upon halting work, the State Project Coordinator or designee will notify the EPA Project Coordinator or designee. The agencies will coordinate to resolve the problem. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

4. Stipulated Penalties: Upon identification of a concern during the course of remedial action implementation, either agency shall document the concern and may informally request that the Settling Defendants take appropriate action(s). Should efforts at informal resolution fail, the Project Coordinators or designee shall determine if a Notification of Violation ("NOV") should be issued to the Settling Defendants. It will be the responsibility of the agency field staff to promptly bring issues to the attention of the EPA and the State Project Coordinators or designees and to clearly document identified problems. EPA/State consultation on such matters will be conducted within one (1) working day of the time the matter is brought to the attention of the State and EPA Project Coordinators or designees.

If EPA and the State Project Coordinators or designees, agree that a NOV should be issued, EPA will promptly issue the NOV. If EPA and the State agree that issuance of an NOV is inappropriate, the Project Coordinator or designees, may send a letter to the Settling Defendants noting the problem identified

and explaining the Agency position on the issue. In the event there is a disagreement between EPA and the State, such dispute shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

EPA will consult with the State prior to issuing a written demand for payment of Stipulated Penalties. EPA is responsible for assessing Stipulated Penalties under the terms of the Consent Decree.

5. Institutional Controls Program: Disagreements between the EPA and State representatives on the Institutional Controls Oversight Committee established by Attachment D to the Consent Decree shall be referred to the formal dispute resolution procedure provided by Paragraph 6.

6. Resolution of Disputes: Disagreements between the State and EPA on matters covered by this MOA shall be immediately elevated to the next level of management. If these managers are not able to resolve the disagreement, the issue will be referred to the State Remediation Bureau Chief, and the EPA Superfund Remedial Branch Chief, for joint consultation and resolution. In the event that a joint resolution is not reached at this level of management, the Director of the Hazardous Waste Division, after consultation (if requested and available) with the Division of Environmental Quality Administrator will make a final decision regarding the disputed matter. The Director of the Hazardous Waste Division will make reasonable efforts to resolve the matter within twenty (20) days. Any decision of the Hazardous Waste Division Director relating to matters covered by this MOA shall be the final resolution of the dispute. Such decision is not subject to judicial review. Upon request by the State, the Director of the Hazardous Waste Division will document the basis for the decision.

7. Reservations. Nothing in this MOA shall be deemed to limit any authority of the United States, or the State, to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

8. Modification and Termination. EPA and the State may modify this MOA upon mutual agreement of EPA and the State. EPA or the State may terminate the MOA upon written thirty (30) days notification to the other party.



5/3/94
Date

Randall F. Smith
U. S. Environmental Protection Agency
Region 10

Date

State of Idaho
Idaho Department of Health and Welfare
Division of Environmental Quality

9. Effective Date. The MOA shall become effective upon signing by EPA Region 10 and the State of Idaho.

Date

5/4/94

Date

U. S. Environmental Protection Agency
Region 10

JOE NAGEL

State of Idaho
Idaho Department of Health and Welfare
Division of Environmental Quality

Memorandum of Agreement
between
United States Environmental Protection Agency
and the
Panhandle Health District
for the Implementation of the
Institutional Controls Program at the
Bunker Hill Superfund Site

Goal

The U.S. Environmental Protection Agency (EPA) and the Panhandle Health District (PHD) enter into this Memorandum of Agreement (MOA) to provide for the implementation of Institutional Controls Program for the remedial actions at the Bunker Hill Superfund Site.

Purpose:

This MOA delineates the general areas of responsibility of EPA and PHD in connection with the implementation of the Institutional Controls Program (ICP) at the Bunker Hill Superfund site. The purpose of the ICP is to provide a regulatory mechanism through which barriers are installed, maintained and protected. The ICP also includes a Health Intervention Program component and various educational efforts to protect the health of the population living at the Site from contamination remaining following completion of the Remedial Actions.

Agreements:

This MOA recognizes that PHD will play a major role in the implementation of the Institutional Controls Program at the Site.

1. Adoption of the Environmental Health Code: An integral component of the ICP is the Environmental Health Code. Panhandle Health District agrees to seek to adopt and implement an Environmental Health Code which will provide the basic regulatory framework for implementation of the ICP. The Environmental Health Code must be adopted by PHD prior to the initiation of remedial actions at the Site.

2. Adoption of ICP Enabling Language by County and Municipalities: Panhandle agrees to work with the Shoshone County and the various local governments to incorporate enabling language into their planning and zoning ordinances that will complement the Environmental Health Code and aid in the

implementation of the ICP. PHD will also be prepared to seek to implement the ICP through its own authorities.

3. Trust Fund: A trust account will be established by the State to receive and manage one million dollars (" \$1,000,000) and may be established to handle the permanent funding established by Attachment D of the Consent Decree to be paid by the Settling Defendants under the Consent Decree. This money will be distributed for use in implementing the Institutional Controls Program.

4. Annual Funding of the ICP: Panhandle agrees to establish and maintain an appropriate mechanism to receive funds from the Settling Defendants. Panhandle shall utilize such funds for implementation of Institutional Control Program as provided in Attachment D of the Consent Decree.

5. Reservations: Nothing in this MOA shall be deemed to limit any authority of the United States, or PHD, to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous materials on, at, or from the Site.

6. Termination: EPA or PHD may modify this MOA upon consent of both parties. This MOA may be terminated upon the agreement of both EPA and Panhandle. This agreement may be terminated by Panhandle, at any time, should adequate funding not be available for Panhandle's management of the institutional controls program. Either party may otherwise terminate this agreement by providing at least one year notice in writing to the other party.

7. Effective Date: The MOA shall become effective upon signing by EPA Region 10 and the Panhandle Health District.

5/3/94
Date:



U.S. Environmental Protection Agency
Region 10

Date

Panhandle Health District

implementation of the ICP. PHD will also be prepared to seek to implement the ICP through its own authorities.

3. Trust Fund: A trust account will be established by the State to receive and manage one million dollars (" \$1,000,000) and may be established to handle the permanent funding established by Attachment D of the Consent Decree to be paid by the Settling Defendants under the Consent Decree. This money will be distributed for use in implementing the Institutional Controls Program.

4. Annual Funding of the ICP: Panhandle agrees to establish and maintain an appropriate mechanism to receive funds from the Settling Defendants. Panhandle shall utilize such funds for implementation of Institutional Control Program as provided in Attachment D of the Consent Decree.

5. Reservations: Nothing in this MOA shall be deemed to limit any authority of the United States, or PHD, to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of hazardous materials on, at, or from the Site.

6. Termination: EPA or PHD may modify this MOA upon consent of both parties. This MOA may be terminated upon the agreement of both EPA and Panhandle. This agreement may be terminated by Panhandle, at any time, should adequate funding not be available for Panhandle's management of the institutional controls program. Either party may otherwise terminate this agreement by providing at least one year notice in writing to the other party.

7. Effective Date: The MOA shall become effective upon signing by EPA Region 10 and the Panhandle Health District.

Date

5/4/94

Date

U.S. Environmental Protection Agency
Region 10

Larry M. Belmont
Panhandle Health District

TRUST FUND DECLARATION

The State of Idaho (STATE) hereby makes a declaration of trust according to the terms and conditions which follow:

1. This declaration of trust is made for the benefit of human health and the environment within the Bunker Hill Superfund Site (SITE) in Shoshone County, Idaho. The SITE is defined by paragraph 4.AD. of the CONSENT DECREE to which this TRUST FUND DECLARATION is an attachment.

2. All monies paid to the STATE by the SETTLING DEFENDANTS, pursuant to paragraphs 7.c. and d. of the CONSENT DECREE, shall be held by the STATE as a TRUST FUND in an account which will be invested to accrue interest to the TRUST FUND in accordance with Idaho Code § 67-1210. All other monies paid to, or contributed by, the STATE for placement in the TRUST FUND pursuant to other agreements or appropriations shall be likewise held and invested.

3. The Governor of the STATE, or his designee, shall be TRUSTEE of the TRUST FUND and shall be authorized and empowered, consistent with this TRUST FUND DECLARATION, to direct expenditures of monies from the TRUST FUND.

4. Monies paid to, or contributed by, the STATE and designated to the TRUST FUND shall be used solely and exclusively as follows:

A. The sum of ONE MILLION DOLLARS (\$1,000,000), paid by the SETTLING DEFENDANTS pursuant to 7.d. of the CONSENT DECREE, and any income earned therefrom, shall be utilized by the TRUSTEE to fund blood lead screening and house dust activities or other institutional control activities within the SITE for the benefit of human health and the environment within the SITE (that are not part of the specific Institutional Control Program activities required by the CONSENT DECREE and Attachment D thereto).

B. Any monies paid by the SETTLING DEFENDANTS pursuant to 7.c. of the CONSENT DECREE, and any income therefrom, shall be utilized by the TRUSTEE to fund Institutional Control Program activities required by the CONSENT DECREE and Attachment D thereto.

C. Any monies paid to, or contributed by, the STATE for placement in the TRUST FUND pursuant to any agreement or appropriation other than the CONSENT DECREE, and any income therefrom, shall be utilized by the TRUSTEE to fund institutional control activities or other activities for the benefit of human health and the environment within the SITE (that are not part of the specific Institutional Control Program activities required by the CONSENT DECREE and Attachment D thereto). The use of such monies shall also be in accordance with the terms of the agreement or appropriation providing for placement of such monies in the TRUST FUND.

5. The TRUSTEE shall cause a brief annual report to be

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rendered and available to the public as to the amount, investment interest and expenditures of the TRUST FUND.

IN WITNESS WHEREOF, the State of Idaho makes this declaration of trust.

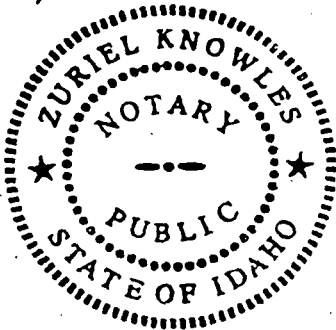
DATED May 2, 1994

STATE OF IDAHO

By Cecil D. Andrus
Cecil D. Andrus
Governor

SUBSCRIBED AND SWORN to before me this 2nd day of May, 1994.

(SEAL)



Zuriel Knowles
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: July 19, 1997